THE
TRIALS
OF
JAMES, DUNCAN, AND ROBERT M'GREGOR,
THREE SONS
OF THE
Celebrated Rob Roy,
BEFORE THE
HIGH COURT OF JUSTICIARY, IN THE YEARS 1752, 1753, AND 1754.

TO WHICH IS PREFIXED

A

Memoir relating to the Highlands,

WITH

ANECDOTES OF ROB ROY

AND

HIS FAMILY.

Edinburgh:
PRINTED BY J. HAY AND CO.
AND SOLD BY
BALDWIN, CRADOCK, AND JOY, PATERNOSTER-ROW LONDON;
AND J. TAYLOR SMITH AND CO. HUNTER SQUARE, EDINBURGH.

1818.

Entered in Stationer's Hall.

MEMOIR, &c.

The condition of the Highlands of Scotland, was for many ages neglected or unknown to the inhabitants of the low country, and of the southern parts of the island. The Highlanders were considered as mere savages, whom it was quite impracticable, and not very desirable to reclaim; and the narrow and violent policy of a barbarous age was exhausted, in attempts to circumscribe their depredations within the devoted space of their own gloomy retreats, and to compel them to exhaust their ferocity in mutual havoc and devastation. The principle on which the Government acted towards them, was wholly timid and defensive; and instead of exacting from them allegiance and duty, in the liberal and enlightened acceptation of these terms, it was satisfied by their forbearance from outrage within the precincts of regular government, and the limits of civilized society. It is impossible to peruse the earlier portions of authentic Scottish

History, without being deeply impressed with the sentiment, that the Highlands were practically regarded, not only as a separate, but as a suspected and hostile territory, which it was not worth while thoroughly to subdue, but infinitely important to intimidate and repress.

The Highlanders therefore despised those laws which were intended, not to protect their rights, but to repel their aggressions. They had no community of language or of manners,—of interest or of feeling,—with their countrymen in the south, whom they regarded as the descendants of their original spoilers—the enemies of their name and of their race. They were known to their southern neighbours, only by their ferocious manners, and their merciless depredations. Like their own mountain torrents, they descended to the plain with the force and the fury of an inundation; but the whole skill and genius of the sufferers below was exhausted in forming mounds and raising embankments, and was never for one moment turned toward the source of the calamity, nor exercised in enquiry, whether by a better direction this frightful visitation might not be rendered either harmless or beneficent.

That such was the general condition of the

Highlands with reference to the Government, not only during the long career of faction and turbulence which preceded the Union of the Kingdoms—but almost down to our own times—no man at all versant in the history of the country will venture to deny.—The Highlanders had long before given convincing proofs of their steadiness and valour; but it was not till after the Rebellion in 1745, when their rude and undisciplined energy in a bad cause, had well nigh shaken the most legitimate and powerful Government in Europe, that their merits and fortune attracted the regard of the Legislature. Since that period, indeed, they cannot complain that they have been either neglected or despised. They instantly became the objects of Legislative care and protection—their grievances were redressed, and their fidelity appreciated—enactments were made to relax the more austere and dangerous parts of their original institutions—to liberate the mass of the population from the fetters of an immemorial despotism—and to assimilate the manners of the mountaineer to those of his fellow countrymen, without breaking his spirit, or insulting his prejudices His countrymen, as if zealous to atone for their former neglect, have ever since occupied themselves with eager and curious

enquiries into his habits and manners—his poetry, amusements, and superstitions—his traditions, and his history under all its manifest exaggerations; and such has been the change in the current of public opinion, produced by one vast impulse, that there still exists a decided propensity to exalt the Highland character even to the highest pitch of imaginative excellence—to give way without resistance to the most extravagant pretensions on the score of its valour, high-mindedness, and generosity,—and to ascribe to it with a gratuitous profusion, all the qualities which can elevate or embellish the character of a people, or administer to the vanity of a race, jealous beyond all others of the glory of their name.

This spirit has risen to its greatest height in our own day. The singular and interesting qualities of the Highland character have never been so carefully displayed, nor so highly admired as in the times in which we live. Poetry has cheerfully emigrated to refresh her withered laurels in the north; and romance has sought its appropriate obscurity and terrors in the gloomy caverns, the trackless desarts, and the obsolete ferocity of the Scottish Highlands. The more humble tourist has feebly impressed upon every rock

some memorandum of his transitory visit; and has impregnated his labouring quarto with many anecdotes and traditions long since told and as long disbelieved. There is not a recess in this wild and interesting country which has not been explored by some venturous traveller,—and so much have all the arts of the south been rendered subservient to the illustration of this region of mist, that there is hardly a romantic spot in it, or a frowning precipice, or a rushing cataract, or an antique castle, or a gloomy cave, which has not been commemorated in song, or delineated in some crude specimen of the graphic art, such as popular travels and other ephemeral works are competent to supply.

It is easy to account for all this, even without referring to the sudden importance which the Highlands acquired when they became the special object of legislative attention, and the natural avidity with which those secluded regions were explored when they were first thrown open to the secure research of the wondering Lowlander. The habits and manners of the Highlanders were of a chivalrous and warlike cast; and the story of their feuds and adventures was yet fresh in the remembrance of their countrymen. Their character and

history formed, therefore, the best *domestic* subject of that ambiguous species of poetry which takes its ungraceful station betwixt the heroic and the common ballad; and which, from its extreme facility and obtrusive glare, has acquired so great a portion of fugitive popularity. It is a singular fact in the history of taste, that in an age, boasting beyond all others its security and opulence, and unquestionably disposed to indolence and enjoyment, the story of wild and barbarian adventure, should have been found the fittest element of poetic excitement; and that the relation of exploits, in which the peaceful and effeminate reader would shudder to engage, should afford him the highest imaginary delight, even when embodied in very humble diction, and sustained by the most slender poetic embellishment.

It is to the circumstance last mentioned, that much of the curiosity which now exists regarding the Highlands, is to be imputed. But whatever be the cause, it is certain, that there is no subject upon which more detailed information has at different periods been laid before the public; and the only difficulty which can occur in any attempt such as the present, is that of selection, amid the multiplicity of the materials. A *sketch*

merely is proposed on the present occasion, such as may serve to introduce the short account which it is intended to give of the celebrated ROB ROY, and his unfortunate sons, who make so conspicuous a figure in the more recent periods of Highland history; and exhibit perhaps the last striking example of the virtues and vices of the Highland character before it was thoroughly reached by the laws, and modified by the influence of foreign manners and institutions. But even this sketch it is difficult to give within the limits of a memoir such as the present, without appearing ignorant or disdainful of the huge masses of laborious antiquarianism—and the precious repositories of gossipping anecdote—and the prodigious collections of grave panegyric, which have of late been produced on this subject.

The Highlands of Scotland are imperfectly separated from the low country by a line which is in many parts irregular and imaginary, and in the vicinity of which the different races are often mingled and confounded. It has been computed, that this line divides the territory of Scotland into parts nearly equal, but that the population of the Highland districts does not exceed one eighth part of that of the whole kingdom. The general

aspect of the Highlands is that of sullen and rugged grandeur, interrupted often by scenes of the most romantic beauty, to which there wants nothing but a milder climate to give all the charms of the most fascinating and poetic landscape. Here there is nothing tame or stagnant; the mountains tower above each other in frowning majesty, and the torrents rush with impetuosity along; and at every turn, the eye is arrested by some material emblem of resistless force and sublimity. Even the sterility which is stamped on the more prominent parts of the scene, and which to the timid and luxurious traveller appears its ruling and repulsive characteristic, is not without its influence in heightening the general effect—in stirring our sympathy for the hapless beings to whose enterprise and toil it seems for ever to deny their appropriate reward,—and who, disdainful of the temptations which luxury presents, and the dependance which it inevitably creates, cling with ardour to the untamed freedom and high and daring spirit which are written on the frowning aspect of their native land.

In many parts of the Highlands the mountains are so bleak and utterly barren, that they derive their names from the colour of

the naked rock which rises in bald and sullen austerity: In other parts the hills are clothed with heath, which in the season of its flower gives them an appearance highly picturesque. The valleys which intervene are called *glens*, or *straths*, according to the magnitude of the stream by which they chance to be intersected. These streams, which abound in every quarter—with the inland lakes which occur in great beauty and variety—and the numerous arms of the sea which often stretch far into the country. impart to the Highlands every embellishment which scenery can derive from the element of water, in all its various and picturesque combinations.

The Highlanders however have at no period been distinguished for industry or for a spirit of improvement, at least in the agricultural or commercial sense of the term. There are but few towns in the Highlands which would be considered as deserving the name in any other part of the island; and manufacturing industry may of course be said to have been ever unknown among the people. Even agriculture has made but small progress, opposed as it has been by the barriers established by nature, and the hardly less powerful obstacles presented by the inveterate usages and institutions of many generations. The inhabi-

tants have been chiefly occupied with the breeding of cattle, for which they find a market in the south; and have for ages borne with patient indifference the reproach of extreme poverty. The habitations of the lower orders are generally constructed of turf, or of unhewn rock, coarsely cemented with clay; in these they are crowded together during the winter; and when the rigour of the season relaxes, they emigrate to their temporary huts in the mountains, where they follow their pastoral occupations, till they are again driven in by the return of winter. Their chief food is milk and the coarser preparations of it; and for the precarious supply of animal food which they can command, they are indebted to that union of the primitive occupations of hunting and fishing with their ordinary pastoral pursuits, which at once gives scope to their activity and spirit of enterprise, and reminds them of the fiercer operations in which the rude genius of their ancestors was almost wholly absorbed.

The condition and pursuits of the Highlanders could not fail to give them a high degree of passive courage,—to fortify their endurance of fatigue and privation,—and to inspire them with some share of contempt for the luxuries of a more civilized state, in which

it is impossible habitually to indulge, without endangering those qualities both of mind and body which are ever of the highest estimation with a warlike race. Some share of vanity on this ground was not unnatural among such a people; nor was this feeling confined to the lower orders. The day is not long past since Highland Chieftans were known to value themselves not a little on their patience of fatigue, cold, and hunger. Their pretensions, indeed, have been sometimes answered with a sneer, and the merit which they boasted has been despised as the result, not of choice, but of necessity. It is impossible, however, not to perceive how narrow and illiberal is the insulting sarcasm—or to forget how much all the qualities on which individuals and nations justly value themselves, are dependent on accident and fortune. We must be satisfied in such cases with appretiating the virtue without curiously exploring its source. The grandeur of Rome might become equivocal, if we should insist on measuring it by the poverty and rapine in which it had its origin; and the freedom of England might lose much of its majestic and imposing aspect, if we should trace it minutely through the turbulence and tyranny by which it has

been alternately vindicated and assailed in the lapse of many centuries.

Every one has heard of the spirit of clanship, which formed the most characteristic feature of Highland manners down to a very late period. The bond of union created by this singular institution was so strong, that the duty of the members of the clan towards their chief, superseded all other obligations. To defend him, whoever might be the assailant—to sacrifice life and fame for him, whatever might be the cause in which he had embarked—to despise all authority which he resisted—to know no law of morals, nor perhaps of religion, which had not the sanction of his conduct and example—to submit both mind and body to his sacred and uncontrollable sway—were the cardinal principles in the narrow education of every mountaineer, which he durst not infringe but at the hazard of death and infamy.—This singular and apparently terrific authority was in its origin strictly patriarchal. The Highlanders were divided into numerous tribes, effectually separated from each other, for all other purposes but those of hostility, by the natural boundaries of mountains, rivers, and lakes, which intersect the country in all directions. By the simple theory of their domestic govern-

ment, each tribe or clan formed but one family, and the chief was the father of that family. His power over his children was unlimited, both in peace and war;—their duty to him knew no bounds but their power of discharging it. As the fountain of their blood, and the father of their race, he was encircled with a superstitious veneration; and to guard the sanctity of his person, to ensure the success of his projects, to sustain the course of his fortunes, the banded strength of his clan was ever ready at a signal. This comprehensive, but amiable despotism, had no memory of ancient conquest to inspire distrust, and few examples of present tyranny to embitter resentment. The obedience of the tribe was unlimited; but the reciprocal duties of the chief were marked with all the precision of inveterate usage. He held the allegiance of his clan, by the condition of that extended affection for every member of it, and zealous regard to their interests, which belonged to the very idea of the parental relation on which his authority was founded. He lived on habits of familiarity and friendship with all the individuals of his clan; he let his lands to them upon easy terms; he was constantly attended by a certain number of his family; and in all the simple relations

of a society thus constituted, the friendly and social principle displayed itself in a prominent manner, and veiled the austerity of that power of which it was at once the origin and the limit.

The more numerous clans were subdivided into different branches, all acknowledging the authority of the common head; but each owning, at the same time, the intermediate or derivative power of a chieftain, who was generally a cadet of the family of the chief of the clan. To the chieftain, in time of war, was assigned the command of a company in the clan regiment,—the supreme command being lodged in the chief. Little can, indeed, be said for the discipline of these rude levies,—but their heroism and devotion have become proverbial. By a sagacious policy, the clans were in general kept in distinct bodies in the field,—the chief had his proper place in the array,—and the order observed was such, that every individual fought under the immediate observation of his nearest friends and relations, whose esteem he was most ambitious to secure. The courage and constancy of the clans have been commemorated by a series of exploits, which form a prominent part in the history of the island; but the desperate enthusiasm of the clansmen

was ever roused to the highest pitch, when danger approached the person of their chief;—And many instances have occurred, in which they have furiously rushed on certain death for his preservation. He who should have hesitated thus to act, would for ever have been treated by his kinsmen as an outcast, and branded by his tribe as the greatest of cowards and villains.

It is impossible to contemplate this scheme of Government, without respecting the simplicity which conceived it;—without admiring the enthusiasm which sustained and perpetuated it. How weak such an arrangement, with reference to the complex interests of an artificial state of society! yet how powerful in its operation upon a rude and simple tribe, strangers to every feeling but the primary instincts and passions of our kind! The simple mountaineer had no wants but what were subservient to a scanty and precarious subsistence; and no passions but those of ardent attachment to his clan, and of unrelenting hostility to those who dared to insult it. In his chief he recognised the unwearied benefactor of the tribe; under *his* auspices he enjoyed whatever comforts his habits and condition required; and to the same consecrated head he looked up as the

guardian of his kindred, and the avenger of his wrongs. The entire relation betwixt the chief and the clan, betwixt the sovereign and the subject, was one of real and constant beneficence. Under this simple and benign system of Government, intrigue, and faction, and turbulence, must have been unknown; or if they did chance to rear their hideous shapes, must have been instantly chaced away by the unsophisticated indignation of obedient and dutiful children. To resist the authority of the chief, implied an odious combination of treason and of parricide: And instead of involving the rebel in the doubtful imputation of misguided patriotism, fastened on him the stigma of a frightful revolt against the most sacred rights and feelings of kindred. How could a contention for the Sovereignty, arise in a state where the title of the chief was not derived from election, nor dependent on accident, but fixed by the same immutable law which, by giving priority in birth to the parent, invests him with the natural government of his children? To dispute such a title, would have been to combat with destiny, to struggle against the eternal laws of nature. There was nothing to humiliate, in that inferiority which was stamped by nature itself; nothing to hope from an

emulation, which transgressed her most sacred decrees; nothing to gain from an enterprise of ambition, the very naming of which would have filled every mind with instinctive horror. Hence the simplicity and energy of this singular system, which struck the roots of authority deep in the affections of the heart, and rested the whole scheme of government on the most powerful passions of our nature. How precarious the state of the most gorgeous despot, surrounded by the fickle and jealous minions of his tyranny, compared with that of the Highland chief, who counted among his attendants only the willing sharers of his exploits, and had no subjects whom he did not recognise as his kinsmen and friends! How energetic the scheme of clan government, when compared even with the more liberal institutions of an enlightened policy, where power, instead of trusting to the passions, which can never betray, steers its course by a shifting balance of narrow and sordid interests, and may be deceived and undone by the slightest error in the various and perplexed combination! If a great nation possessing military discipline and science, could be governed on the patriarchal principle of the Highland clans, with its unity of purpose, enthusiasm

of attachment, and entire devotion of spirit; the united power of the world, tainted as it is every where with selfishness and faction, could not long withstand its energy, or arrest its progress to universal dominion.

It is true that this scheme of local authority was in a great measure subversive of the power of the general government; and that it depended on the temper and character of the chiefs, whether the legislature of the kingdom should be obeyed,—except by the immediate application of force, within their isolated territories. The laws were of course disregarded; and the clans holding themselves but little responsible to them in the affairs either of war or peace, were often in a state of open disobedience and rebellion.—Their isolated situation, and the principle of family attachment on which the clans were individually united, rendered them jealous of each other; and their rude and imperfect notions of justice, led to frequent encroachments—to constant broils—and almost unremitting hostilities. There is nothing accordingly for which they are more distinguished, than the frequency and violence of their feuds, which were conducted in daring violation of the laws, if indeed the legislature, which was too feeble to protect from aggression, had

any right to exact an abstinence from retaliation. The warlike spirit of the clans was thus kept in perpetual exercise; and their native resolution of character, was cherished into a spirit of great ferocity by the circumstances of their condition, and the events in which they were called upon almost daily to participate. They levied war against each other without waiting for, or regarding any other authority than that of their natural leaders: And the general government, which on such occasions they do not appear to have recognised, was compelled to overlook the enormity of a civil war, levied without its sanction, and which in any other state of society would have been considered as an act of rebellion. The pretext for these outrages was generally the right of reprisal or of revenge; but the love of plunder appears in many instances to have formed the true incitement. To the spirit of revenge displayed by them on such occasions, of which many examples are recorded, it would be difficult to find a parallel in history.

The virtues and vices of the Highland character were of course in a great measure the result of chance, and of the condition in which this people had been placed by the events of their early history. Nature had indeed insti-

tuted their patriarchal scheme of government; but it was a combination of accidents,—the remoteness of their situation, the difference of their language and manners, the difficulty of approaching their retreats, the doubtful advantages to be derived from the subjugation of a barren and sequestered region, the consequent neglect of their more civilized and powerful neighbours,—which had enabled them to give perpetuity to their primitive institutions. It was ignorance and chance also which rivetted the fortunes of the Stuarts in their affections, and rendered the support of the tyrant claims of the exiled family a point of honour with the mountaineers.

It is curious to observe how near a parallel has been found to many of the most striking points of the Highland character, even among the remote inhabitants of the mountains of India; and to reflect how much an enlarged experience in this point, confirms the maxims of an enlightened philosophy. The parallel has been drawn by an elaborate writer in the Quarterly Review,* who has traced among the Afghaun tribes of Asia, a wonderful similarity to the Highlanders in their laws and manners, their arms, their mode of conducting war, their patriotism, their hospitality; and above all, in

* Vol. 14. p. 288 et seq.

their feuds and in their revenge, which form the least amiable, but not the least prominent part of the Highland character. Of this latter quality, the author referred to gives some specimens among the Highlanders—and he says he could add an hundred—which are of the most frightful and revolting nature, and must make his readers thankful for the economy which has in this instance spared his book of common place. He does not however produce or refer to his authorities for the details which he gives; and we should willingly believe that vulgar tradition, or a coarse imagination, has added much of their horrors to these shocking recitals.

The haughty spirit of the Highlander, has at all times been remarkable; and, joined to his proverbial poverty, has excited derision among his more opulent neighbours. This unbending and often preposterous pride, descended almost to the lowest orders of the clan; for he who valued himself on his ancestry, and who believed that he sprung from the family of his chief, whom he considered as the first of men, could not brook an equality with the lowlanders, who seldom put a high value on these imaginary distinctions. Necessity compelled some even of the more distinguished persons of the clans, to superin-

tend personally the operations of the most humble industry; and when these lofty spirits had to submit to drive their cattle to the markets in the low country, they were often treated with a degree of familiarity, which must have been quite appalling to them. Their pretensions were estimated by the rudeness of the lowlander, not according to the length of their genealogies, but the character of the immediate occupation in which they were engaged. The dignity of the Baron of Thunder-tentronkeh himself, would be in some danger in a gin-shop with graziers and butchers; and one cannot wonder, if, in similar circumstances, the delicacy of a Highland *gentleman* was often wounded, and his fiery spirit roused, by the unceremonious grossness of his strange companions.

A great difficulty presented itself at all times in disposing of the superfluous population of the Highlands; and it is to this circumstance, no doubt, that we must in part ascribe the warlike and predatory habits of the people. Their country was generally barren; and numerous tribes were inclosed within vast mountains, which secluded them from the rest of the world, except when they were to be passed for the purposes of violence. There was neither taste nor scope for the im-

provement of these regions; and as to the arts of manufacture and commerce, they were at once unattainable to the interprise, and despised by the martial spirit of the Highlander. The state of Highland society, ignorant and barbarous, was not of course such as to permit what Mr Malthus has denominated the moral check to population, to operate with much force; and the consequence was, a frequent and periodical excess beyond the means of subsistence. To relieve this, the young men of higher birth and more daring spirit, called in the aid of adventure, and gathering round them a band of more humble, but not less resolute followers, exercised their spirit and courage, either in domestic feuds, which were sought for the sake of plunder, or in foreign service, in which they often acquired high distinction.

Although the principle of hereditary succession was in general maintained among the chiefs of the Highland clans, it was not held so sacred as not to admit of occasional violations, of which a curious example is to be found in the periodical work to which we have already referred:—A rude people, are, of course, fickle and capricious, and as personal qualities are every thing in the selection of their leader, examples must have occurred

where the natural capacity of the favoured individual did not precisely concur with the institutions of the clan. Courage, conduct, and hospitality, were indispensable virtues in a chief; and the instance of deposition from this high estate, which is commemorated by the anonymous writer alluded to, exhibits a strange specimen of the reverence in which the clans held the last of these virtues. The heir apparent of the M'Donalds had expressed his displeasure with the costly preparations made by his vassals for his reception in the hall of his ancestors; and so much were the clansmen offended with this pitiful and stingy spirit, that they instantly deposed him, and raised a younger brother of more promising character to the succession.

The Highlanders, from the causes which have been slightly sketched, became military in all their notions; the use of arms formed their common occupation, and the affairs of war their ordinary pursuit They appeared on all public occasions, at market, and even at church, with their broad swords and dirks; and more recently, when the use of fire-arms became general, they seldom travelled without a musket and pistol. It is a singular circumstance, however, that notwithstanding their warlike habits from the earliest times,

it was not till a period comparatively recent, that they were considered as equal in the use of arms to their countrymen of the lowlands. The real cause of this inferiority has been well explained. The Highlanders, though active and brave, had no discipline; their rude habits, and their impetuous character, concurred to prevent them from acquiring that union and method in their operations, which were indispensable in a conflict with the disciplined bands of their countrymen in the south. The constant jealousy, and almost incessant warfare which prevailed betwixt the Kingdoms of Scotland and England before the Union of the Crowns, had led the Scottish Government to watch vigilantly over the military habits of its more civilized subjects; and every man in the low country, where its authority was effectually exercised, from the age of 16 to 60, was regularly trained to arms. These disciplined warriors were long considered as an overmatch for the Highlanders in their rude encounters; and it was not till after the union of the Crowns, when the animosity of the rival nations subsided, and military discipline was neglected on both sides of the border, that the Highlanders, whose habits continued unchanged, asserted a superiority which they have ever since

struggled to maintain. The splendid victories of Montrose, during the rebellion in the reign of Charles I. laid the foundation of their warlike fame. Their attachment to the House of Stuart, was confirmed by the renown which they had gained in the cause of the most unfortunate of its princes; and with the exception of some districts in the west, the whole population of the Highlands was devoted to this hapless family. The Highlanders became favourites, of course, with Charles II., who had sense enough to feel the obligations of his House to their steadiness and fidelity; and he conferred on them the equivocal honour of chastising the covenanters, whom his frantic tyranny had driven to distraction and despair. It is a bad feature, indeed, of their annals, that they have too often tarnished their honour by a blind attachment to despotism; that their most brilliant exploits have been performed with perhaps an honest, but certainly a misguided zeal against the liberties of the nation; and that one of their greatest atchievements, the victory at Killicrankie, enabled an accomplished minion of tyranny to die in the exultation of victory, after having been steeped to the lips in the blood of a persecuted people, and atchieving every crime which could en-

title him to the appellation of the destroyer of his country.

The honours which the Highlanders had gained under Montrose were not, however, without a sad compensation in the disasters inflicted upon them by the genius of a still more able and sagacious captain. Oliver Cromwell was not a man to be trifled with, nor to permit their daring contempt of authority, or their undisguised devotion to the Stuart family, to escape without signal chastisement. He established garrisons at Inverness, and other places in the Highlands—made his disciplined troops penetrate the deepest recesses of the country—dismantled the castles of the chiefs—and compelled the Clans to surrender their arms, and give pledges of fidelity to his government.—Those even who detest the crimes of this usurper, must respect his vigour and talents—and it is not the slenderest proof of his genius for government, that he was able to reduce to the obedience of the laws the most daring and incorrigible portion of his dominions, which had hitherto defied both the policy and the power of the legitimate sovereigns. It is universally acknowledged, that under his vigorous sway the lowlands enjoyed greater security from highland depredation, than at any period

recorded in history, prior to the year 1745, when a new æra was introduced, and the civilization of the highlands was accelerated by the miscarriage of an enterprize, which, if it had succeeded, would surely have prolonged their barbarism.—It must be owned, that usurpers, who owe their rise to violence, are more dexterous in the use of its instruments, and more efficient agents of a reform, which violence alone can accomplish, than peaceful and legitimate sovereigns; and this perhaps is the secret of all that is attractive and brilliant in their character.

The highlanders were of course determined enemies of the revolution settlement;—and King William, it is said, fully occupied with his continental war, and with the affairs of Ireland, resolved to purchase from the clans, that fidelity which he could not conquer. If we are to believe the anonymous writer in the Quarterly Review,* he entrusted the Earl of Breadalbane with £20,000 sterling, to be distributed among the heads of clans, to secure their acquiescence and neutrality. But this nobleman, it is said, managed his trust with singular perfidy; and while he appropriated the greater part of the

* Vol. 14. p. 343.

'petty douceur to himself, proceeded to silence the refractory chieftains, by the most cruel measures; and, in particular, by the terrific example of vengeance, which was exhibited in the tragedy of Glencoe, and which the writer in the Review does not hesitate to charge on Breadalbane.

The Highlanders, in spite of every effort to subdue their spirit, still cherished their ancient prejudices, and their hostility to the protestant government established by the revolution. It is said indeed that on the accession of George the first, many of their chiefs would willingly have acquiesced in the new establishment, which there seemed no prospect of subverting; and that an address of loyalty to the sovereign, subscribed by a great number of the leading men, was intercepted by the Duke of Argyle, who saw a better prospect for his ambition in the disaffection, than in the loyalty of the Highland clans. This singular document has been recently published, * and in such circumstances as renders its authenticity highly suspicious. It is hardly credible, that in the temper and spirit of the Highlanders of these days, such an

* Quarterly Review, vol. 14. p. 313.

address should have been framed; and it is yet more incredible, that, if it had existed, it should so long have escaped the many curious enquirers as to the events of that period. It is certain, at any rate, that if the Highland chieftains experienced the momentary feeling of loyalty expressed in this strange document, it speedily evaporated: For no sooner was the fated expedition of the Earl of Marr undertaken, than it was keenly supported by their credulous and unwary enthusiasm. The character and conduct of this unhappy enterprise, have already been criticised by a master in such speculations;* and the events to which it gave birth, have been detailed in different forms with great minuteness. The utter incapacity of Marr for the daring interprise which he had undertaken, soon became manifest to his adherents, who had staked their fortunes upon the result of his undertaking; and posterity has confirmed the judgment which was then pronounced. The obstinate, but indecisive battle of Sheriffmoor, was fatal to the spirit of the clans, who required success to sustain them in the perilous adventure in

* See Lord Bolingbroke's letter to Sir William Wyndham

which they had embarked, against a power which delay was ever strengthening, and which, if it was to be overthrown at all, must have been struck to the ground by a single blow. The enthusiasm of the highland levies, unused to discipline, and impetuous in all their movements, was not to be sustained through the protracted course of a doubtful warfare; and their spirit, as usual, melted away before obstacles upon which their ardour had never calculated, and with which their resources were inadequate to contend..

After the battle of Sheriffmoor, the clans retired towards Perth. Government was employed in the mean time in organizing a formidable resistance in their rear, and in raising a strong party for its own support in the northern Highlands. For this purpose they availed themselves of the assistance of one of the most singular and odious characters recorded in history—the celebrated Lord Lovat,—whose very name is an epitome of all that is infamous.

This too notorious person had been compelled many years before, to expatriate himself on account of offences which were scarcely less ridiculous than detestable—which mingled the black ingredients of crime with the li[illegible]r elements of insanity, in such cu-

rious and whimsical proportion, that the force of either species of satire would be exhausted in describing them. He had professed himself an admirer of the daughter of his kinsman and predecessor the former Lord Lovat;—but when he found that obstacles occurred to the accomplishment of his design, he turned round at once with gay inconstancy to her *mother*, who chanced to be in his power; and, in spite of her wrinkles and resistance, forced her into an involuntary marriage with him, which he hastened to consummate with the most brutal violence. Insanity alone could have excused this revolting transgression of all laws—but Lord Lovat had not this excuse to plead. He had a purpose in view, a purpose of the most vindictive depravity to which he sacrificed every feeling of nature, and every law of honour. The unhappy lady who could not become the victim of his lust, was made the instrument of his revenge. She was of the Athole family, against whom this youthful adventurer entertained a deep grudge which was exalted to the most desperate fury by their resistance to his union with their young kins-woman. By his barbarous treatment of the Dowager Lady Lovat, he exulted in believ

ing that he had offered a deep and inexpiable insult to her kindred. The quality of this unparalelled outrage, stamps the character; and developes the inmost recesses of this dark and crafty spirit. The bad passions not only predominated in his character, but they absorbed his every sense and faculty. He who could for a purpose of revenge not only subdue, but torture the manliest of passions, must indeed have reached the dark sublime of depravity, and had already given a sure pledge of the wayward tenor of his future life.

It has been contended in palliation of this frightful outrage, that the *forcible abduction*, as it is called, of women, was in these times a crime of almost daily occurrence; and that the records of Scottish criminal jurisprudence are filled with discussions on this odious breach of the laws. Even were this apology supported by the fact, it seems rather to be a libel on the country which it pretends to characterise, than a justification of the individual whom it feebly essays to defend. The alleged frequency of such legal discussions, while it may shew the turbulent and unprincipled character of a part of the population, proves no less distinctly the horror

with which their crimes were viewed, and the jealousy with which they were avenged by the laws.—But is Lord Lovat's a case of ordinary *abduction?* Was *his* incitement to the act a generous and romantic passion, spurning obstacles, and braving persecution; and which, even in the reckless generosity of its guilt, claims our sympathy, and commands our respect? This sordid transgressor stands forward in all the harshness of unmitigated crime, without one alleviating circumstance to soften resentment, or propitiate regard; he appears the spoiler of virtue, without the incitement of passion; the profaner of a hallowed intercourse, without taste or relish for its enjoyments; the cold and callous sacrificer of all that was respectable in the honour of the other sex, and all that ought to have been dear to his best feelings,—to an unmitigable, insatiate, and remorseless spirit of revenge.

The laws of his country did not look upon his offence, which included the guilt of rape and rebellion, with a mild and forgiving eye. He was fugitated for not appearing to take his trial, and compelled to expatriate himself, and take refuge in France. Some memoirs of this portion of his history have

been preserved, and they are really valuable, as indicating the depth of human depravity.—But he still looked forward to a return to his native country—and as a fugitive from its laws, he could expect this opportunity only from their subversion. He therefore embarked in the cause of the Stuarts with laudable alacrity, devoted to it the whole force of his talent for intrigue, and even ventured so far as to return to Scotland in disguise, to prepare the way for an insurrection. But as he had neither heart nor principle in this or any other cause, it was easy to purchase his treason to it. The intelligent and sagacious agents of the Government in Scotland, perceiving the use which in a moment of emergency they could make of his daring character, and his influence over his clan, yet unextinguished even by the multitude of his crimes, opened a negotiation with him, and this whimsical renegade was in the year 1715, found supporting the lawful Government, and taking possession in its name of the town of Inverness.

The rebellion was soon suppressed. The Government, however, felt disposed to take measures for preventing the recurrence of such an event; and as the spirit of clanship

appeared to form the source of the universal disaffection which pervaded the Highlands, every effort was made to weaken and subdue it. The measures adopted for this purpose, in the first instance, were not indeed the most politic or effectual. The clan act, which rewarded the loyalty of the vassal with the forfeited rights of his superior, and, on the other hand, conferred upon the superior the property of the rebellious vassal, was but a poor contrivance; because the superior, or chief of the clan, was not likely to embark in any enterprise which was not encouraged by the majority of his dependents. The maxim *divide et impera*, how powerful soever in its application to the politics of a sordid and degenerate race, was misapplied to the rude candour and instinctive fidelity of the Highlanders; and a law which offered temptations only to the most despicable renegade, from the system of their social institutions, could not have great influence among a people who existed only in union, and whose every enterprise was a conspiracy.—It is acknowledged also, that the attempt of the Legislature to terminate, by an abrupt and sullen enactment, the homage which the vassals had uniformly paid

to their chiefs in the shape of services, both civil and military, was followed only by the most contemptuous disobedience. The mandate for disarming the clans was, if possible, still more impolitic; for it was obeyed only by the adherents of Government, whom it was not intended to affect, and cunningly eluded by the discontented clans, against whom alone it was intended to operate. What other consequence could be expected, from an attempt to inflict the last penalty and degradation of conquest upon an unexplored territory, which had never been actually subdued, and which, even at the moment when this inconsiderate law was enacted, would have boldly refused, to the pretended victor, the slightest tribute or token of his achievement?

The Highlanders saw clearly enough the determination of Government to destroy every vestige of their peculiar usages and institutions, and to reduce them (and this was deep humiliation in their eyes) to an equality with the people of the low country, whom they despised; but they did not discover, in the means employed, either the sagacity or the power which was to accomplish this fatal revolution. They continued accordingly to adhere to their ancient manners, and their jea-

lousy of all intrusion within their ancient limits; and still indulging a hope, that better days were approaching,—that their fortunes were again to prevail,—and that the destiny of the Stuart family, with which they had united their own, was ultimately to regain its ascendant, they remained in a shy and suspicious estrangement from the Government, politics, laws, and manners of their country. To confirm them in this course, the exiled family employed all the zeal of their adherents, and all the activity of their emissaries; and it was during this quiet and frowning interval, betwixt the Rebellions of 1715 and 1745, that the spirit of the clans was maturing itself for the unhappy adventure, in the failure of which the fortunes of the family whom they so much cherished, were for ever broken and overthrown.

During the sullen period which intervened betwixt the two rebellions, and which discovered the anomalous spectacle of a large body of the British people, neither thoroughly reconciled to the Government, nor daring openly to dispute its authoriry, the Scottish Highlands exhibited many examples of that untamed violence which, without implying an open rebellion against the laws, indicates a sad relaxation the

power. It was impossible, during the period referred to, for any adventurer from the low-lands to attempt a settlement in a highland district,—and instances occurred of the most atrocious outrages, committed to prevent or to chastise such an intrusion. But the Highlanders were not contented with repelling their countrymen of the south from their own ancient habitations; for they insisted on making the most unceremonious visits to the low country, for the purposes of plunder. They abandoned themselves to a system of depredation upon that part of the low country adjoining the Highland border; and among the noted characters who engaged in adventures of this sort, no one makes a more conspicuous figure than the celebrated ROB ROY, whose unfortunate offspring gave occasion to the criminal proceedings of which an account follows in this Volume.* But of him, and of his family, we shall have more to say in the sequel.

The predatory exploits of the border Highlanders, did not escape the notice of Government. A sort of militia was raised to suppress them; and as this force was composed of native Highlanders, it was believed that they would be able to explore the re-

cesses of the banditti; and from their knowledge of the country and its inhabitants, to defeat their schemes, and bring them speedily to justice. The sort of police levy which was thus raised, was denominated the "Black "Watch," and the command of the different companies was given to Highland gentlemen, whose attachment to the established Government could be relied upon. Out of this institution, the celebrated 42d Regiment arose, which has rendered itself famous by so many brilliant exploits, and associated with its name whatever is gallant or splendid in modern warfare.—Under the original organization, the Black Watch did not escape the reproach of sharing sometimes in the spoils of the freebooters, whom they were destined to intimidate. Their conspicuous valour, however, soon recommended them to the employment of Government in its more important operations abroad; and the effect of the institution upon the whole, was, rather to cherish the military spirit of the people, than to subdue their excesses.

Lord Lovat, of whose youthful celebrity, we have already had occasion to speak, was one of those chieftains to whom the recent measures of government, with respect to the guardian military force of the Highlands, was

most obnoxious.—In his subsequent career, this singular person did not forfeit the reputation which he had acquired almost at his entrance on the world.—Under pretence of obedience to the will of government, he had contrived to train his whole clan in rotation to the use of arms; and had availed himself of his influence and power in such a manner as to shew, that he meditated the universal oppression of the neighbouring clans. He had the haughtiness, without the honour of a Highland chieftain—the vices, without any of the redeeming virtues of that mixed character. He had the daring interprise which belonged to his race and to his country,—but so completely spoiled by the taint of bad associations and the alloy of foreign manners, that it became difficult to determine whether cunning or ferocity most predominated in his character. He had the faculty of appropriating, by a sort of unerring attraction, all that was bad in the nature which he inherited, and in the habits with which he was conversant;—he was a Machiavel in a region noted for its simplicity, and a courtly barbarian in the centre of Parisian refinement. Yet his various qualities were not well mixed or subordinated; they counteracted each other in a

manner which secured his victims against the absolute consummation of his projects; and at last involved his ardent, but reckless daring, in utter perdition. He tyrannised over his clan, he insulted and oppressed his neighbours he enacted the most ferocious despotism in his family, and meditated the deepest duplicity towards the government of his country. The honours heaped upon him for his services in 1715, had no effect in securing his attachment; and he quickly engaged in courses which roused the strongest suspicion of his fidelity. He was accordingly degraded and punished, by taking from him his independent company and pension.—There was no length, of course, which he was not prepared to go in revenge. The Pretender promised him a Dukedom, and other honours calculated to seduce both his avarice and his ambition: But he was too politic at once to commit himself; and it was not till after the battle of Prestonpans, when success promised to legalize the cause of rebellion, that he gave a loose to his cherished partialities, in a form which well sustained the atrocious consistency of the ravisher of the Dowager Lady Lovat. He did not choose to embark personally, or to give his ostensible countenance to an interprise which he still consider-

ed as critical and hazardous; but he urged *his son* to the fatal undertaking, and wantonly drove him on to sustain the guilt, and the shame of this desparate interprise.—But all his arts were unavailing to screen himself from that vengeance which was fast overtaking the multitude of his crimes; and after the fatal engagement at Culloden, he had the sad mortification to meet the ruined chief, in whose rash undertaking he had embarked his fortunes, and to mingle with him the accents of despair. He was doomed at last to terminate a life, protracted in infamy, upon the scaffold; and he closed it in a characteristic manner by a cold and sullen sneer, over a catastrophe which signalized even his last moments, and seemed to shew that there was no period of his career, which was not doomed to be in one way or other fatal to his species.

The events of the civil war in 1745, are well known to the public, and have been described with great accuracy, in the work of a distinguished writer*. The Highlanders in this their last and most fatal enterprise, displayed the same traits of character by which they have ever been distinguished. Their habits had not been changed, nor their spirit

* Home's History of the Rebellion, quarto.

subdued,—and it is melancholy to reflect, that neither had their prejudices been modified by the progress of opinion in other parts of the empire. They had still preserved their insulated and peculiar character, their ancient attachments, their primitive and enthusiastic obedience, their ignorance of the institutions of civilized life, their contempt for the laws of their country, and their devotion to a cause which those laws had condemned, and which the united spirit and intelligence of a mighty population had vowed to suppress. But their rashness was severely punished; and it is impossible to look back upon the unmeasured chastisement which was inflicted upon their erring enthusiasm, without execrating the instrument of this cruel vengeance, and invoking the just retribution of history against the unsparing agent of desolation. Even the fierceness of the clans appears the most perfect chivalry, when compared with the civilized butchery which was put in force against them, at a moment when misforutune demanded for them the clemency of the conqueror, and when policy as well as feeling, prescribed a generous oblivion as the surest basis of future tranquillity. It is singular, that the hero of Culloden should have been the only individual of his amiable and

august family, whose history can, in any part of the British empire, be remembered with other feelings than those of gratitude and veneration.

Every effort was made after the close of this unhappy civil war to reclaim the Highlands to an obedience to the general government, and to render them accessible to the light and civilization which had visited every other corner of the empire. The martial genius of the Highlanders was seduced into the service of the government, and by a series of beneficent acts, their interest and passions were gradually assimilated to those of their countrymen in the south. Since this period, the Scottish Highlands have formed an excellent nursery of the warlike genius which has sustained the fortunes of the empire in its unequal struggles with the Continental powers, and exalted its military renown.

The spirit of rural improvement also, which had wrought so many wonders for the inhabitants of the south, visited these remote regions, from which it had been long expelled by indolence and prejudice. The effect of this discovery upon the Highland chieftains and great proprietors, has in some instances been fatal to the interests of a brave and hardy population, who have been sacri-

ficed to paltry views of gain, and a sordid desire of rivalling the seductive opulence of a more propitious climate, and a more industrious population. There cannot be a more striking proof of the dissolution of the interesting spirit of clanship, which did honour to the country, and exalted the character of its rude population, than the indifference with which, on many occasions, an ardent and devoted tribe has been sacrificed to a system of rapacious economy. The recent system which has substituted sheep for men, and raised the vulgarity of the intrusive sheep farmer, over the masculine spirit of the native highlander, may be consistent witb some narrow or sordid theory of national wealth ;—but it is not upon the metaphysical principles of such a system of political economy that a question of this kind is to be decided. There are higher and nobler aims to be accomplished by the government of an enlightened state than mere wealth can ever attain; and there is a loftier science for an enlightened statesman than that of political economy in the degrading view which has sometimes been taken of its functions and objects. The Highland proprietors may in some instances have been incapable of appreciating the national importance of the power with which they were invested; but it might have been expected,

perhaps, of the imperial government, that it should have interposed to arrest the fatal career of their selfishness,—and that rising above the narrow views of a systematic and sordid economy, it should have preserved for the state a fund of valour and of enterprize which can never be replaced by any system of policy, nor compensated by the most splendid accession of revenue.

If the Highlanders have, in recent times, been without political supporters of their interest, they have not wanted enthusiastic advocates of their fame. Several fearless attempts have been made to confer upon them a superiority over their southern neighbours, not only as to the qualities in which they decidedly excel, but as to various other points in which their preeminence is far more doubtful. Mrs Grant, in her "Essays on the Superstitions of the Highlanders," and in her other publications, has distinguished herself by an amiable quixotism in the cause of her favourite people,—and she has been powerfully seconded by her ingenious critic in the Ediuburgh Review, to whose paper the reader is referred, as containing a more striking and compendious view of all the paradoxes that have been uttered on this subject, than is any where to be found*.

* Edin. Review, vol. 18. p. 484. et seq.

These ingenious writers have not hesitated to maintain, that the Highlanders are more polished in their manners and sentiments than the people of any other country,—that they are skilled in all the graces of polite conversation,—and almost universally possessed of a deep knowledge of poetry, and great sensibility to its beauties.—It required a certain extravagance of thought, no doubt, to have made such assertions,—and still greater ingenuity to render them plausible for a moment.

The key to the whole theory is,—that the Highlander is, or was, a sort of savage, or at least a being little removed from a state of primitive barbarism,—and that *vulgarity* is the vice, not of the savage state, but of an imperfect condition of refinement. It is the vice, say the apologists of the Highlanders, not of extreme indigence, but of an uncultivated opulence;—the disease, not of a band of savages, but of a crowd of conceited and luxurious manufacturers. The progress of national prosperity, therefore, is, according to this theory, unpropitious to the refinement of manners;—and the generous feeling and polished spirit of a gentleman are to be found in the mass of society only, at that humble stage of improvement which philosophy would

pronounce to ly upon the very confines of barbarism.

The error of this theory, which ascribes to the rude inhabitants of the mountains, virtues which they could never possess, may be easily exposed. A rude tribe may boast its warlike virtues; but it can never excel in the arts of peace, or in the accomplishments of society. To say that the Highlanders were not *vulgar* in their sentiments, or their manners; nay, that they were peculiarly distinguished from their neighbours, by an exquisite refinement, is to construct a poor sophism upon an abuse of language. The term *vulgarity*, is uniformly referred to the usages and manners with which we are conversant. The vulgarity which is abhorred in polite society, is the aggregate of the distinguishing qualities which predominate in the lower ranks of that species of life which is known to us by immediate observation; of course, the term is not applicable to savage or semi-barbarian manners, which are known only from description. But rank and subordination are not unknown in rude, more than they are in civilized societies;—and the lower classes in both will have their peculiarities—their comparative ignorance—their grosser selfishness—and all the other disagreeable qualities

which make them appear mean and vulgar, when compared with their superiors. We do not, indeed, perceive the vulgarity of those whose manners are strange to us, and whose very aspect has something novel and characteristic in it, with the same acuteness with which we discover kindred qualities in the lower ranks of that population with which we are familiar. The most offensive customs of the lowest classes of the Greeks and Romans have in them little that is repulsive, when transmitted to us through the representations of learned and ingenious men, and consecrated as it were by the reverence paid to antiquity;—and we may venture to assert, that the notion of vulgarity was never attached in the mind of a modern scholar, to any part of the population of the ancient world. But can we doubt, that it was conspicuous and offensive to those who were compelled to come into immediate contact with it?—That awful distance of time which now dignifies the meanest usages of antiquity, has been supplied in the case of the Scottish mountaineer, by a distinction of language, manners, and institutions, which long separated him from the rest of his countrymen—and gave an impression of novelty and wildness to his whole character and

aspect, that effectually shielded him from the reproach of vulgarity.

To talk of the superior knowledge and talents for society of an ordinary Highlander of the lower classes, appears a startling paradox. Where were his means of acquiring knowledge in his rude and sequestered state, without communication, but with the narrow circle of his kinsmen; and compelled by the precariousness of his supply of food, to exhaust his whole thoughts, and to exercise a constant activity in quest of the means of subsistence, and of the slender comforts which his condition afforded, or his habits required? It has often been remarked, that the æra of knowledge and refinement begins only after immediate physical wants have been supplied, and a surplus has been created to secure the society against the recurrence of any imminent casualty;—in short, after the semi-barbarous state has terminated. But at what period had the Highlanders reached this condition, before they were assimilated to the manners and usages of the low country,—when their peculiarities were almost wholly effaced? If the fanciful picture which has been drawn of their superior knowledge and politeness in a state of primitive seclusion had any foundation in nature, they would form the single

exception or record to the general maxim, That knowledge and refinement have their growth only in the security of opulence, and the stability of political institutions.

The extreme dependence of the lower orders under the ancient institution of clanship, could not be propitious to their mental improvement. It is true, that this ancient and venerable scheme of government had many advantages in the condition of such a people,—and these have already been pointed out and ackowledged. But the system which insured an entire subordination, and a strict uniformity of sentiment and pursuit among the whole members of the clan, must have been unfavourable to the cultivation of individual intellect, and the progress of general improvement. The character of the whole clan, must in such a state have depended upon the character of the chief; their knowledge and refinement, such as they were, must ever have borne a small but fixed proportion to the same qualities in their leader and their model. But it is almost superfluous to remark, that the progress of knowledge could have been but small in a state of society, where it was not seconded by the free and excursive operation of individual intellect; and that the chances of social improvement must have been as narrow

as possible, where they depended entirely on the caprice or casual accomplishments of a select number of individuals placed at the head, instead of resting on the broad and unfailing basis of an active, liberal, and inquisitive population.

Nothing, it is said, has tended so much to lower the character of individuals in modern society, as the independence which they have acquired by means of good laws, and of a vigilant and active police. The Highlander, on the other hand, is said to have been rendered courteous to those around him by the fear of their resentment, against which he had no assured protection; and to have become habitually brave, by the necessity which he felt of trusting to his own exertions for his defence. But courteousness and courage are precisely the ingredients which enter into the composition of a gentleman; and the character would be almost lost among us in the present state of society, were it not for the practice of duelling, which the laws have been unable thoroughly to subdue, and of proscription from good society, for any notorious violation of its sanctions.—There must be something wrong in this theory, as generally happens when a hypothesis is invented to explain an imaginary state of facts.

That dependence upon the friendship and forbearance of others, which is created by the imbecility of the laws, is, like every other species of dependence, degrading in its nature, and productive of a low species of fawning and intrigue, altogether unpropitious to integrity of character. We are much mistaken if, in many instances, this was not its precise effect upon the feelings and habits of the Highlander, and if the talent of address which it cultivated, did not often betray a considerable share of cunning and selfishness, as well as of courtesy and politeness.—The courage again, which the whole world has united in conceding to the Highlander, was by no means the peculiar product of his lawless condition, nor the peculiar virtue of a semi-barbarous state. It is not known that the lower orders of the best governed country in Europe are deficient in this virtue, nor has it perished among the Highlanders of the present day, who now obey and are protected by the laws, in common with their fellow subjects. Were the Greeks and Romans unmanned by the protection which they enjoyed under their rigorous and jealous laws, —laws which it was their glory to maintain, and the triumph of their patriotic bravery ever to preserve inviolate? Was their cou-

rage enfeebled by being subordinated to the public institutions of their country, from its connection with which it derived so much of its heroic cast and quenchless enthusiasm?

As to the greater leisure which the Highlander is supposed to have possessed for cultivating the amusements of social intercourse, so fatally denied to the plodding mechanic of a more opulent society, it may be remarked, that if the mountaineer really employed his time in this manner, he must have differed in his taste and habits from every other barbarian. The short and uniform history of the savage life is a constant alternation, betwixt wild and irregular exertions for supplying physical wants, and a state of vacant repose.—Nor will the long genealogies of the clans, with their admiration of their ancestors, and reverence for their recorded exploits, go far to account for that superior elevation of mind which has been imputed to the Highlander. With all his imputed enthusiasm on subjects of this kind, he is but an humble proficient in the science of genealogy, compared with some continental admirers of antiquity, who have never been highly distinguished for their politeness or refinement. The grave antiquarianism of a German Baron of the true breed, would surprise, the most

conceited Highland genealogist that ever existed.

Upon the poetry of the Highlanders, which, with its gloomy descriptions, and lofty recitals, is represented as having had so great a share in imparting to them their characteristic loftiness of soul, we should decline saying much, as the subject is rather a delicate one on the point of authenticity, and has brought more suspicion and reproach upon celtic pretensions, than we should be desirous of reviving.

We have thought it right to express our distrust of those extravagant theories which, by ascribing to the Highlanders qualities and accomplishments which it is hardly possible they should have possessed in their ancient state of wildness and seclusion, have a tendency to bring into discredit their legitimate claims to the possession of those interesting and manly qualities which belonged to their condition, or were compatible with their primitive habits and institutions. In fidelity and devotion,—intrepid daring,—and unwearied patience of fatigue;—in all the simple and manly qualities, both of mind and body, which belong to the semi-barbarous state, they were undoubtedly pre-eminent. They had also a large share of the ferocity, which seems inseparable from the same condition;

with much of that selfish and rapacious character, which is generated by the collision of extreme poverty with superior opulence. This last feature of their character, was more conspicuous among those of the Highland tribes who were settled on the confines of the low country,—and it made itself manifest in frequent depredations, which were continued down to a period comparatively recent. It was developed in a milder form, and softened with occasional traits of feeling and generosity, in the character of the celebrated Rob Roy, of whom, and of his unfortunate sons, we shall now present the reader with such anecdotes as we have been able to collect from the various publications which have appeared upon the subject.

The clan Gregor, or M'Gregor, to which this noted character belonged, was one of great antiquity, and had at one time held extensive possessions in the counties of Perth, Stirling, and Dumbarton. At a very early period, however, they incurred the resentment of some of their more powerful neighbours, and were dispossessed of a great part of their territories. The intrigue and influence of their enemies appear also to have brought down upon them the vengeance of Govern-

ment, and they became exposed to a rigorous and desolating proscription. Driven to despair by these measures, they became altogether lawless, and gave themselves up to a course of depredation, not only upon the lowlands, but upon the neighbouring clans, to whose jealousy their power had fallen a sacrifice. An account of a frightful tragedy acted by them upon Drummond of Drummondernoch, is preserved in the Quarterly Review. * This shocking outrage appears sufficient almost to have justified the rigour of the act of the Privy Council which followed, and of the commission issued, " to seek for and " pursue Alister M'Gregor of Glenstrae, and " all others of his name, with fire and sword."— It appears also from the same account, that even the revenge, terrible as it was, which was taken upon the M'Gregors, did not break their power, or subdue their spirit; for not long after the above period, they were able to fight the decisive battle of Glenfruin, in which they defeated, and almost exterminated the clan of Colquhoun. The treachery which was afterwards practised to the chief of the M'Gregors, who had surrendered himself upon a promise of security, was disgrace-

* Vol. XIV. p. 3078.

ful to the enemies of the clan, and almost brought them down to a level in point of morals with this ferocious tribe. The act of outlawry against the clan Gregor which followed, and in consequence of which they were hunted down like wild beasts, and their very name proscribed and forbidden, raised their ferocity to the highest pitch of desperation.

It has been contended by some apologists of this devoted clan, that their proscription was an act of the most wanton tyranny on the part of government,—that they were not more obnoxious to the laws than the rest of their countrymen, who were at that period universally addicted to predatory operations—that the true source of all their calamities was the jealousy entertained of them by the families of Montrose and Argyle, betwixt whose domains the country of the M'Gregors was situated—that from their vicinity to the borders of the low country, in the shires of Argyle, Perth, Dumbarton, and Stirling, their depredations, although not more frequent than those of their neighbours, became more conspicuous, and more readily attracted the notice of Government—that as the Highlanders, who were without agriculture or

commerce, depended chiefly on their stock of cattle for subsistence, of which they were often deprived by the rigour of winter, the practice of stealing cattle, as it was matter of necessity, so it was considered as no way disgraceful,—that the exaction of what was called "black mail," was not peculiar to the M'Gregors, and was at all events but a fair return made on account of the protection afforded from rapine and plunder.

It is curious to hear such arguments at the present day.—The singular turbulence of the clan Gregor is, we think, well vouched by numerous anecdotes upon record—and although the measure of vengeance adopted against them was excessive, it is no less manifest, that they had acquired a good title to some sort of distinction from the laws which they had so daringly violated.—The jealousy of the rival chiefs of the Campbells and the Grahams, does not sufficiently account for the fate of the M'Gregors; for it would have been the policy of either chief, rather to have solicited the alliance, than conspired the destruction of the intervening clan. It is difficult to know what to make of the other arguments recited above, which appear to imply a defence of the crime of theft as anciently committed in the Highlands,

and to degrade the turbulent dignity of a Highland marauder, into the common-place vulgarity of a *police contractor*. We believe that this very safe and legalised appellation has even been expressly applied to the celebrated Rob Roy, and others of his profession,*—but it is impossible to consider with gravity, a defence, which, if it was not meant in jest, must have been conceived in profound ignorance.

It was towards the close of the 17th century, when his clan was in a state of utter depression that Robert Roy Macgregor, commonly called Rob Roy, arose to retaliate in some degree the injuries of his kindred, if he could not retrieve their fortunes or re-establish their reputation. The birth and history of this singular adventurer are involved in considerable obscurity. If we are to believe a late editor of the history of Stirlingshire*, Rob Roy was a younger son of Lieutenant-Colonel Donald M'Gregor, "in his Majesty's service," by a daughter of Campbell of Glenlyon; but we have not been able to ascertain the precise period of his birth. He is said to

* Nimmo's Stirlingshire, edited by the Rev. William M'Gregor, Stirling, p. 714.

have received a good education, and to have been naturally of a daring and adventurous character, although of a mild and gentle disposition. His original employment, like that of many persons of some rank in the Highlands, was that of a grazier and cattle-dealer; but having met with misfortunes, and suffered much oppression, he betook himself to the lawless courses in which he afterwards became so much distinguished. The story of his wrongs is differently told by various writers; some of whom allude obscurely to an outrage committed on his family, which, if true, was sufficient to justify the most unbounded resentment.

In a curious tract, entitled, "The High-"land Rogue," published in London during the lifetime of Rob Roy himself, his character, while employed as a grazier, is delineated in the most favourable terms. "He gained," says the author, "the love of all that knew "him; for he had good natural parts, was "obliging to every body, and a very divert-"ing pleasant fellow in conversation. He "kept good company, and regarded his "word with the greatest strictness imagina-"ble."—But his prospects were soon blasted, it is said, by the treachery of a person whom he had admitted as a partner into his exten-

sive business, and who absconded with a large sum of money, the property of M'Gregor. This disaster, together with the unsuccessful issue of some lawsuit into which he had entered with the Duke of Montrose, alarmed his creditors, and soon involved him in beggary and ruin.

Driven to despair by his misfortunes and by the harsh treatment which he received, he had no resource but to turn his activity and daring to the purposes of depredation. Of his strength and ferocious appearance, the old writer already alluded to, gives a whimsical account. "He is a man," says he, "of a prodigious strength, and of such an uncommon "stature, that he approaches even to a gigantic size; he wears a beard above a foot "long, and not only his face, but his whole "body is covered over with red hair, which "is the reason that he is commonly called "Rob Roy; for that in the Highland dialect "signifies *Red Robert*; it being usual there to "give people nicknames from their hair or "complexion." This is of course a whimsical exaggeration: but all accounts concur in representing Rob Roy as endowed with that uncommon strength and masculine appearance, which are so well adapted to the mode of life in which he was about to engage. The

Reverend Editor of the history of Stirlingshire states, that he has seen a handsome picture of the adventurer in the possession of the Argyle family; but as we have not had an opportunity of examining it, we cannot say whether it confirms in any respect the account given above of Rob Roy's personal appearance.

It appears certain from several documents which have been preserved, that Rob Roy was a gentleman by birth; and that before his misfortunes, he was a person of substance and consideration. An old contract yet exists, which was entered into betwixt his father and John Buchanan of Arnprior in May 1693, and in which the relationship of the contracting parties is recognised as the motive for their uniting in a bond of mutual friendship and protection.—In the marriage-contract of James Graham of Glengyle, the nephew and ward of Rob Roy, the latter is denominated "Robert Campbell of Inversnait;" and it appears from other documents, that he had also at one time been proprietor of Craigrostan. It is said, however, that he had been compelled to wadset, or impledge his estate of Inversnait to the Duke of Montrose, for a sum of money; that the property was afterwards adjudged by the creditor; and that the family of M'Gregor was

expelled by the factor for the Duke, with the most frightful outrage. The insult offered to his wife on this occasion forms the subject of a ballad entitled, "Rob Roy's "Lament," said to have been composed by the unhappy lady herself—This treatment, along with his other misfortunes, drove him to desperation; and he vowed revenge on the authors of his wrongs.

When M'Gregor discovered that there was no possibility of eluding his misfortunes, he at first retired from the storm, and by the assistance of his domestics and retainers, found means to convey the most valuable part of his effects to his house at Craigrostan, where he knew he could live secure, and defy all his enemies. Craigrostan, according to the author of "The Highland Rogue," is situated on the borders of Loch Lomand, and environed with high mountains and stupendous rocks—"the passages along which," says the author, "are very intricate, and generally so narrow, "that two men cannot walk abreast. It is a "place," he adds, "of such strength and safe-"ty, that one person well acquainted with it, "and supplied with ammunition, might easily "destroy a considerable army if they came to "attack him, and he himself at the same time "need not so much as be seen by them." It

is needless to remark how admirably adapted this place must have been as a retreat for an adventurer such as M'Gregor.

As the name of M'Gregor was proscribed, Robert took that of Campbell, out of respect to John the 2d Duke of Argyle, who became his patron; and thus endeavoured to atone for the injuries which the M'Gregors had formerly received from his family. He had another object in affording to Rob Roy all the protection which he could give him, without becoming responsible to the laws; for Roy's enmity to the family of Montrose was no way disagreeable to the Duke of Argyle, the rival of that family. It was under the name of Campbell accordingly, that Rob was generally known out of the limits of his own country, and the society of his kinsmen and retainers,—among whom however he was always recognised by his own surname of M'Gregor.

It is as a free-booter only that the reputation of Rob has descended to posterity. Of his exploits in this hazardous occupation, a variety of anecdotes have been preserved by different compilers; but they are generally speaking so improbable in themselves, and told with so many contradictions by the different narrators, that it is almost

impossible to discover whereabouts the truth lies in the mass of conflicting absurdities. We shall endeavour however, to glean from the various accounts, whatever appears worthy of notice, without pretending to vouch for a single particular of these extravagant tales.

The Duke of Montrose, or his factor rather, had been Rob's chief enemy; and upon him he was accordingly determined to satiate his revenge. According to one account, this factor had been the immediate instrument of the insult offered to Rob's wife; according to another, he was concerned only in some foul play regarding the transference of Rob's property of Inversnait to the family of Montrose. However this may be, M'Gregor was resolved at once to inflict some personal chastisement upon the factor, and to avenge himself upon his master, by robbing the latter of his money. He accordingly surprised the factor at a place called Chapel Aroch, when returning with the produce of his collection. The factor tried to conceal his treasure, but it was in vain. M'Gregor not only relieved him of his burden, but insisted upon his accompanying him to the Highlands. He carried him to Loch Kettern,—landed him on a desert island there, where he confined him,

according to one account, for three days,—according to another, for several weeks,—and intimated to him upon his release, no longer to presume to collect rents in the country of the M'Gregors, as he was determined in future to undertake this duty himself.—The author of "The Highland Rogue" asserts, that the audacity of M'Gregor went still farther,—that he invaded the Duke of Montrose's seat at Buchanan, and carried off a considerable booty; and that amid the outrages thus committed against his opulent and powerful enemy, he was so careful of the interests of the poor country people, and maintained so rigorous a system of discipline among his followers, that not one act of violence was committed by them against the humble tenantry of his victim.

It is admitted by the Reverend editor of the history of Stirlingshire, that Rob in 1691, headed what is called "the herriship of Kippen;" but this is ingeniously construed into a military diversion by the "Laird of Inversnait," in favour of his legitimate sovereign. We do not know precisely what this means,—for the plunder of the peaceable inhabitants of a country appears to us to be an act of unjustifiable violence in whatever cause, or under whatever pretext it may be performed

In 1713, a garrison was established at Inversnait to check the irruptions of Rob Roy and his followers. Rob however determined to surprise it; and he gained over to his assistance a woman of his clan who lived within the garrison, and who at his solicitation, distributed whisky to the soldiers, which they drank freely till they became altogether intoxicated. Rob seized the opportunity and set fire to the fort; and although he was suspected for this outrage, yet as it would have been difficult to prove it, and still more difficult to overpower and seize the offender, no enquiry was made, and the garrison was re-established at the expence of government.*

Soon after Rob Roy retired to Craigroistan, he was joined by numbers of the more lawless and vagrant part of his clan, who vowed obedience to him as their leader. They indulged, it is said, in every species of outrage,—broke into, and rifled houses in the dead of night, and carried the inmates prisoners to Craigroistan, where they detained them till such a ransom was paid as was fixed by their chief. † Rob at the same time kept spies abroad in all directions, from whom he got sure intelligenee of what was

* This and several other anecdotes which follow are abridged from some late numbers of Blackwood's Magazine.

† The Highland Rogue, p. 21.

going on. No person could travel within some miles of his retreat, without the risk of being seized and detained a prisoner; while the treatment of the captives was generally so harsh, as to insure every effort on their part for their redemption. But M'Gregor, in the midst of his usual severity, could sometimes shew a degree of generosity, hardly to be expected from his habits and profession. An instance of this kind is referred to by the author of "The Highland Rogue."—Rob had one night seized a gentleman who was on a visit to some friend in the neighbourhood; he kept him prisoner for several days in expectation of a large ransom; "but" adds the author, "finding that he had really been very "much reduced by great losses, he not only "set him at liberty, but supplied him with "money to defray his travelling charges, "and sent him in one of his boats with ser-"vants to attend him, as far as he could go "by water."

It would be doing injustice to the next anecdote told of Rob Roy by the same author, to give it in any other than his own words. The reader will perceive of course, that there is much whimsical exaggeration in the story, if it be not an entire fiction from beginning to end; but the manner in which it is told is characterestic and amusing.

" Not long after this, a rich old parson, " who was a zealous maintainer of predestina- " tion, coming late one night from an enter- " tainment, where he had been a little too " free with the bottle, unluckily reeled into " the hands of the M'Gregors.

" By the small regard they showed to his " habit, old sanctity quickly suspected he was " fallen among reprobates, and how to extri- " cate himself he knew not. He endeavoured " to lay open before them the heinous and " damnable sin of sacrilege; but his tongue " failed him, and the accents fell imperfect " from his mouth. The ungracious rogues " laughed at his stammering, and hauled him " away to their captain, who ordered them to " take care of him, till he was able to speak " more intelligibly.

" Rob Roy, it seems, in the time of his " prosperity, had been one of the flock over " which our elect elder was pastor; and " knowing him to be rich, sent for him next " morning, to treat about his ransom; de- " signing to make the most of a prize so con- " siderable.

" But old *Boanerges* being brought before " him, began with making grievous com- " plaints of the unchristian usage he had met " with. ' Is this (continues he) doing as you

"would be done by? Are ye quite aban-
"doned to works of darkness? Have ye lost
"all sense of goodness, of religion, con-
"science, and justice? What do you think
"will become of ye? Do you never expect
"to give an account of the deeds done in
"the flesh? Have ye no thoughts of the
"dreadful consequence of your wickedness;
"no regard to future rewards and punish-
"ments? Cannot hell and damnation, fire
"and brimstone, awaken and terrify ye from
"this destructive course of living?' 'Prithee,
"no more of your cant,' says Rob Roy; how
"often have I heard you preach, that we are
"not free agents, but that all our actions
"were pre-ordained; and that of conse-
"quence we are under a necessity of doing
"all that we do? Are we then accountable
"for what we are compelled to, for what it
"is impossible for us to avoid? How im-
"pertinently do you tell us of living without
"religion, conscience, and justiee, when, ac-
"cording to your own doctrine, we cannot
"help it? Do you mutter at the treatment
"you have received from us? Consider that
"it was determined before the creation that
"you should fall into our hands, and suffer
"all that you have undergone; and that we
"had not power to act otherwise. Why do

" you advise us to employ our thoughts upon
" a state of life hereafter, when, if your own
" notions are just, we were from all eternity
" fated to happiness or misery; and conse-
" quently all our endeavours to obtain the one,
" or prevent the other, must needs be vain
" and ridiculous? You make pretensions to
" an extraordinary piety; but you are not
" ashamed to rob; nay worse, to cheat your
" congregation, by taking their money for
" preaching, when at the same time you be-
" lieve it is to no purpose. Can there be
" any thing more chimerical than the whimsies
" you put in their heads about religious du-
" ties? There can be no duty where there is
" no free action; and therefore, whether you
" preach or not, whether they pray or swear,
" go to church or a brothel, give alms or
" pick pockets, the case is still the same;
" all actions are indifferent; right and wrong,
" good and evil, virtue and vice, are mere
" empty sounds without any signification.
" You are not, I say, ashamed of thus impos-
" ing upon the weakness of your flock, because
" (if you believe what you teach) you think
" that providence compels you to it; and yet,
" without question, you would take it for a
" piece of high injustice in me to demand as
" much money for your liberty as the profits

"of your benefice amounts to in a year. But "think of it as you please, it is your fate to "pay it, and to meet with but scurvy usage "till you comply.' The parson was struck "mute for some time, not knowing what "answer to make; but at length, considering "that it was in vain to oppose destiny, he "came to a resolution, and sent orders for "the sum required."

We must now follow the adventurer in an affair, in which he is said to have been engaged, of a graver aspect and of deeper importance to the interests of his country. The Highland noblemen and gentlemen attached to the fortunes of the Stuart family, had a meeting in Breadalbane, under pretence of hunting the deer, but in reality to communicate upon their political sentiments, and to concert measures for accomplishing their political objects. They entered into a bond of union and fidelity. This instrument however fell into the hands of Campbell of Glenlyon, who then commanded at Fort William, and who was suspected and detested by the clans. As many of Campbell's friends however were implicated in the treason, he kept the bond for some time without divulging its contents to the Government; but finding himself distrusted and despised, he at last

resolved to make the unhappy disclosure. Rob Roy was solicited to interpose, in order to prevent this fatal step. He proceeded accordingly to Fort William; but upon his arrival he learned from Glenlyon, that he had already put the document into the hands of Governor Hill, who was to send it by a messenger, escorted by an ensign's party, to the privy council. Rob, on getting this intelligence, took his measures accordingly. He lay in wait for the messenger in a sequestered place; surprised, and with the assistance of his followers, overcame the military escort,— got possession of the fatal dispatch, and thus saved the lives and estates of many of his countrymen.

The animosity of the adventurer to the Athole family was implacable: He ravaged their country, and sacrificed the inhabitants to his revenge. The Earl of Athole, provoked by his reiterated insults, mustered his power, and succeeded in seizing the bandit in his own house, when he put him on horseback to be carried under a sure escort to Stirling. But while the cavalcade was passing through a narrow defile, Rob availed himself of his opportunity, sprung from off the horse on which he had been forcibly mounted, darted up the adjoining hill with the rapidity of lightning,

and eluded the search of his pursuers.—The same historian from whom we have gleaned this anecdote gravely assures us, that 20 of the Athole men were frightened from attempting to secure him, when they casually found him alone in Glenalmond. From the same excellent authority we learn, that when Rob chose to join the Duke of Perth in his feud against the Earl of Athole, and to raise 60 of his M'Gregors to support the latter, they entirely discomfited the Athole men by the mere terror which their name and appearance inspired,—the Athole men taking them for *demons* with whom it was needless to contend. !

The author of The Highland Rogue recounts the following anecdote of Rob, of which we have lately had a different edition in a periodical work already referred to. But we prefer greatly the recital of the contemporary historian, and shall give the story therefore in his own words.

" Rob Roy's creditors now grew almost
" past hopes of recovering their money. They
" offered a large reward to any that should
" attempt it successfully; but not an officer
" could be found who was willing to run such
" a hazard of his life; till at length a bailiff,

" who had no small opinion of his own courage
" and conduct, undertook the affair.

" Having provided a good horse, and equipt
" himself for the journey, he set out without
" any attendance, and in a few hours arrived
" at Craigroistan ; where, meeting with some
" of Rob Roy's men, he told them he had bu-
" siness of great importance to deliver to their
" master in private. Rob Roy having notice
" of it, ordered them to give him admittance.
" As soon as he came in, the Captain demand-
" ed his business. 'Sir, (says the other,)
" though you have had misfortunes in the
" world, yet knowing you to be in your na-
" ture an honourable gentleman, I made bold
" to visit you upon account of a small debt,
" which I dont doubt but you will discharge
" if it lies in your power.' 'Honest friend
" (says M'Gregor) I am sorry that at present
" I cannot answer your demand; but if your
" affairs will permit you to lodge at my house
" to-night, I hope by to-morrow I shall be bet-
" ter provided.' The bailiff complied, and
" was overjoyed that he had succeeded so
" well. He was entertained with abundance
" of civility, and went to bed at a seasonable
" time Rob Roy then ordered an old suit of
" clothes to be stuffed full of straw, not wholly
" unlike one of the Taffies that the mob dress

" up and expose upon the 1st of March, in " ridicule of the Welshmen ; only, instead of " a hat with a leek in it, they bound his head " with a napkin.

" The ghastly figure being completely form- " ed, they hung it upon the arm of a tree, di- " rectly opposite to the window where the " officer lay ; he rising in the morning, and " finding his chamber door locked, steps back " to the window, and opens the casement in " expectation of seeing some of the servants, " when to his great astonishment he cast his " eye upon the dreary object that was hang- " ing before him ; he knew not what to make " of it ; he began to curse his enterprise, and " wished himself safe in his own house again. " In the midst of this consternation, he spied " one of the servants, and calling to him, " desired him to open the door : The fellow " seemed surprised to find it locked, begged " his pardon, and protested it was done by " mistake. As soon as the bailiff got out, " 'Prithee friend, (says he,) what is it that " hangs upon yonder tree ?' 'O sir, (says the " other,) tis a bailiff, a cursed rogue that had " the impudence to come hither to my mas- " ter's own house, and dun him for an old " debt, and therefore he ordered him to be " hanged there for a warning to all his frater-

"nity; I think the insolent dog deserved it,
"and in troth we have been commended by
"all his neighbours for so doing.' The
"catchpole was strangely terrified at this ac-
"count; but hoping that the servant did not
"know him to be one of the same profession,
"he walked away from him with a seeming
"carelessness till he thought himself out of
"sight, and then looking all around to see
"if any body observed him, and finding the
"way clear, he threw off his coat, and ran
"for his life; not resting, nor so much as look-
"ing behind him till he came to a village
"about three or four miles off; where, when
"he had recovered breath, he told the story
"of his danger and escape, just as he appre-
"hended it to be.

"Rob Roy was so pleased with the success
"of his frolic that the next day he sent home
"the bailiff's coat and horse; and withal let
"his neighbours know, that it was only a
"contrivance to frighten him away; by which
"means, the poor rogue became the common
"subject of the people's diversion."

The only embellishments of this faithful narration which are to be found in the modern edition of it, are the fainting of the messenger from pure fright, and the ducking which he and his companions received from the retain-

ers of the adventurer.—The messenger, it is added, hurried to Stirling to recount the story of his escape. The Governor of Stirling Castle ordered out a party of soldiers to seize Rob Roy; but some of the clan who were returning from a predatory excursion on the banks of the Forth, observed the movements of the military, and gave Rob intimation of their approach The country of the M'Gregors was immediately roused and put in a posture of defence. Rob in the mean time concealed himself among the hills, until the zeal of the soldiers sunk under the arduous search in a mountainous and difficult country. The soldiers worn out and hopeless of success, took possession of an untenanted house, among the hills, which they filled with heath for beds. The M'Gregors always upon the alert, seized their opportunity,—set fire to the house, and nearly sacrificed the unfortunate soldiers, one of whom was killed by an accident. After this the party returned in disappointment to Stirling castle, despairing to make any impression upon the Highlanders.

It has already been noticed, that Rob Roy was in the practice of levying black maill from his unprotected neighbours. It appears that Campbell of Aberuchill had submitted

among others to this odious assessment; but he found it convenient to neglect the regular payment of the tax Rob, impatient at his disobedience, proceeded to his house; knocked at the gate, while a party was at dinner with Aberuchil, and demanded from the servant immediate access to his master. This was refused, on pretence that Mr Campbell was engaged;—but Rob was not to be trifled with. He sounded his horn: in an instant his retainers rushed forward; he ordered them to sweep the cattle off the estate; and Aberuchill to avert his vengeance, submitted to make an apology, and to pay the illegal exaction.

Great advantage was in these unsettled times taken of the wadset rights, as they were called, by which the lands of the unfortunate debtor were impledged to the creditor. The estate of M'Gregor of Glengyle stood in this perilous condition when the heir was under Rob's guardianship. Some months before the period of redemption had expired, Rob, aware of the danger to which his ward was exposed, raised the necessary fund to enable him to redeem the pledge. But the creditor, a man of rank and fortune, endeavoured to elude the agreement, by pretending that the bond was missing; and the limited period being thus

allowed to expire, possession of the lands was demanded by the creditor, and measures were taken to remove the unfortunate Glengyle. In this extremity, Rob assembled his retainers,—caught the overreaching creditor in Strathfillan, and made him prisoner,—compelled him to send immediately for Glengyle's bond, to deliver it up, and refused payment even of the original debt, as a punishment upon the creditor for the outrage and injustice which he had contemplated.

Other instances are recorded of his justice and humanity, which increase our surprise at the enormities into which he was too often betrayed.—An agent of the Argyle family who had signalized himself by his oppression of the tenantry committed under the sanction of technical formalities, was proceeding unjustly to dispossess a small feuar in Glendocharn;—Rob contrived to way-lay him and to carry him to Tyndrum, where he compelled him to sign a formal obligation to restore the unhappy tenant to his possession. He ordered as a mild admonition to the oppressor, that he should be ducked in St Fillan's pool, to restore him to a sense of justice and humanity.

Our hero is celebrated for many acts of the same irregular generosity. A poor farmer on

the Montrose estates had fallen deeply into arrear of his rent. Rob generously gave him the money to settle with the factor, taking care at the same time that it should never reach the pocket of the landlord, by intercepting the bailiff in his return, and exacting from him full restitution Nay, he even went so far, if we are to believe the published stories of him, as to grant receipts of his own authority to some of the Duke of Montrose's tenants, which receipts were often admitted, from the terror of his name, and to ensure his forbearance for a time at least, from his customary depredations.

The other anecdotes related of him are not less characteristic of his daring spirit, and of his lawless and romantic generosity. He is said to have inflicted personal chastisement on the laird of Blairdrummond, the Duke of Perth's factor, for endeavouring unjustly to annul a lease of certain property held by a kinsman of Rob's, which he forced Perth to confirm or renew.—But his spirit of enterprise and aggression was chiefly directed against his ancient foe the Duke of Montrose; whose graneries at Moulin he frequently invaded, seizing sometimes for himself, and often for the poor, such supplies as he thought

necessary, and quietly giving receipts for the same to the keeper.

These continued outrages roused of course, the zeal of the sufferers to bring him to punishment;—but he contrived to elude their most active pursuit. He skulked in his celebrated cave on the banks of Lochlomond which was surrounded by mighty fragments of rock, and inaccessible to all but his trusty retainers who knew his retreat, and shared in his danger and his fortunes.—He had generally about 12 men of this description along with him. One evening he rested with his followers at a paltry inn at Strathfillan. The Duke of Montrose who had so much reason to seek revenge upon him had become acquainted with his motions. The house was accordingly attacked by a party of the Grahams. M'Gregor himself was in the house,—his followers were distributed in an adjoining barn. No sooner was the alarm given, than Rob was ready and stood on the defensive,—he knocked down the assailants as they advanced to the door. His people in the meantime roused by the noise, issued from the barn and attacked the Grahams in their rear who were compelled speedily to retreat. They afterwards ventured however to follow Rob and his party in their march

to their own country;—nor did they desist from their fruitless undertaking till some of them paid the forfeit of their temerity with their lives.

Rob Roy emboldened by this success, descended into the plains, and ventured upon the desolating enterprise which has since been known under the name of the "herriship "of Kilrane." This desperate outrage attracted the notice of government, and the western militia were put in motion to chastise the offenders. They proceeded the length of Dirimeurin; but, disheartened by their reception, soon retired. A reward was now offered for the head of Rob Roy; and it was resolved to explore even his celebrated cave which had hitherto remained inviolate.—He had with him but two followers when seven horsemen came up with him on the banks of Lochearn. They demanded his name,—he evaded the question,—and the troopers assured of their prey, ordered him to surrender. Rob instantly darted from their view and ascended the neighbouring hill; but his followers, who were less active, were sacrificed to the fury of the dragoons. Rob, irritated by this disaster, determined to have his revenge;—and watching his opportunity, he shot three of the troopers, and their compa-

nions, alarmed and disheartened, instantly galloped off.

As M'Gregor perceived that the notoriety of his excesses had now rendered him the special object of the vigilance and activity of Government, he found it convenient to retire for security to Glenfruin in Argyleshire; acquainting the Duke of Argyle at the same time of the objects which he had in view by settling within his territories. From this gloomy and distant retreat, he committed constant ravages on the property of Montrose and Athole. The Duke of Montrose in these circumstances complained to Argyle of his conduct in harbouring this noted freebooter: The latter replied, that it was beyond his power either to hinder Rob's settlement, or to expel him from his retreat. In the meantime, the vigilance of Government relaxed;—and Rob, finding that the eagerness with which he was pursued had abated, returned to his own country.

The Earl of Athole, irritated to the highest pitch by the continued insults and depredations of Rob Roy, resolved in person to attempt to secure him; and accordingly advanced with a party towards Balquhidder. With a powerful band of followers he reached the residence of Rob on the day of his

mother's funeral. When Rob heard of his approach he grasped his sword,—met the Earl courteously,—and affected to thank him for the honour of his company at the funeral. The Earl explained to him that this was not the purpose of his visit, and acquainted Rob that he must immediately accompany him to Perth. Against this resolution Rob of course warmly remonstrated; but finding it to no purpose, he affected to comply with the Earl's demands. His friends were in the greatest agitation,—and Rob, rendered desperate by the agonizing scene, boldly drew his sword. Athole upon this discharged a pistol at him,—and Rob, happening at the moment to slip a foot, fell to the ground. The ball had not even touched him;—but his relations believing him slain, were animated with the utmost fury. His sister, the lady of Glenfalloch, seized Athole by the throat and brought him to the ground. The clan in the meantime assembled in crowds, attracted either by the melancholy ceremony about to be performed, or by the report of the arrival of their unexpected visitors;—and Athole, happy to be disengaged from the grasp of the amazon who had seized him, hastily retired from the country of the M'Gregors.

The depredations of Rob Roy and his friends extended even to the low country, and approached sometimes within three or four miles of the town of Dumbarton. A report was circulated, that they intended to come in the night, murder the militia, and fire the town. The inhabitants, alarmed by the report, removed their more valuable effects to places of security; and it was determined that, to anticipate the danger, the militia should make their way to Craigroistan, and surprise the robbers in their retreat. The militia were joined by the ships of war at Greenock, which made their way to Lochlomond; and in the first instance secured the boats upon the lake belonging to Rob Roy, which they were permitted to accomplish without resistance. Rob had previous intelligence of the attempt; but he did not think proper to stand upon the defensive. "This," (says the author of the Highland Rogue) "was a "great condescension in him; for (as was "mentioned before) his place of residence "was so well fortified, both by nature and "art,—the passages about it were so difficult "to strangers, and so familiar to the M'Gre-"gors, that, had their captain permitted them "to have made use of the many advantages "that were then in their power, it had been no

"difficult task to have destroyed the whole "body of the besiegers. But he knew himself "secure from their impotent endeavours; and "therefore, laughing at their folly, he ordered "his men to retire to their hiding places. "The opposite party having made a vain "search for the M'Gregors, imagined they "were run away; and so, returning trium-"phantly on board, they set sail, and the "next day landed all safe at Dumbarton "harbour."

A story is told by the same author, which, although it does not personally concern Rob Roy, is altogether characteristic of his gang. Two soldiers belonging to the garrison of Inversnait, who were in a sickly condition, were permitted by their officers to wander in the adjoining country for the benefit of fresh air. They walked till they were overcome with fatigue, and then sat down to repose themselves in a lonely spot between two hills. Here they were surprised by some of the M'Gregor clan, who seized them,—bound them to a tree,—and drawing their broad swords, literally cut them to pieces.—It is recorded of Rob Roy himself, that he was struck with the utmost horror and detestation of this wanton barbarity.

There is yet another exploit recorded by the same historian, which it would be difficult to recount in an intelligible manner in any other words than his own. We therefore give it as it appears in the work referred to.

"Captain M'Gregor being now grown no-"torious, both for his robberies and rebellion, "a proclamation was published, offering a "reward of £1000 to any person that "should apprehend and bring him to justice.

"Hereupon a certain great man, in the "north of Scotland, sent several messages to "him, assuring him, that if he would come "in private to his house, and satisfy him in "some material points relating to the rebel-"lion, his trouble should meet with no less a "recompence than his Majesty's free pardon "and favour, both to himself and his fol-"lowers.

"At length, by repeated intreaties and "additional promises of protection, and that, "upon honour, if he disliked the terms, he "should have full liberty to return in safety, "he was brought into a compliance to run "the hazard.

"The nobleman was walking in his gar-"den, when a servant brought him word, "that Mr M'Gregor was arrived; upon which "he gave orders to conduct him in.

" At Rob Roy's appearance, the Duke, with " a seeming fondness, ran to embrace him, " protesting he knew not how to express the " joy he felt at the sight of so brave a gen- " tleman.

" The compliments on both sides being " over, his Grace began to be very inquisitive " about persons concerned in the late insur- " rection, and other things which M'Gregor " was unwilling to answer directly to.

" The Duke told him, if he expected to ob- " tain a pardon, he must make a full and par- " ticular discovery.

" ' If your Grace, (says he) had let me know " as much by your messengers, it had saved " me the labour of coming so far.' ' I never " intended (says the Duke) to give you this " trouble to no purpose; for though at present " you are not in a humour to satisfy my curio- " sity, 'tis possible your mind may alter in a " few days; and therefore it may not be im- " proper to detain you.' ' And am I then be- " trayed? (says M'Gregor.) Has a man of your " quality such a mercenary soul, as to forfeit " his word, his faith, his honour, and all for a " pitiful reward?' ' Peace! Peace!' (quoth " the Duke,) and, stepping back, knocked at " the garden door; which being immediately " opened, a body of guards rushed in.

" Rob Roy, in a most violent rage, laid his
" hand on his dagger with an intent to stab
" the Duke for his perfidy; but instantly re-
" collecting his reason, he considered such a
" rash action might prove of fatal consequence
" to himself; and that dissimulation might
" effect what would be impracticable by vio-
" lence. He therefore quietly suffered them
" to carry him to prison.

" Being there, (at Rob's earnest entreaty,)
" the Duke coming to him, he in a most sub-
" missive manner, begged his Grace's pardon,
" and promised him, if next day he might
" have liberty, he would acquaint him, not
" only with the particulars then desired, but
" with other affairs also much more material.

" This so pleased the Duke, that he resolv-
" ed to use all the fair means possible, to en-
" gage him to perform his promise; and there-
" fore ordered his guards to treat him with
" all the respect that was consistent with the
" safety of a prisoner.

" His Grace was so elate with the success
" of this enterprise, that he forthwith dis-
" patched an express to the Lord Justice
" Clerk, who then resided in Edinburgh.

" Upon which information, his Lordship
" immediately ordered a party of dragoons,
" then quartered at Linlithgow, to march to

" his Grace's seat, and conduct M'Gregor
" to Edinburgh gaol: But notwithstanding
" their expedition, they happened to arrive
" too late, as we shall find hereafter.

" The Duke was not satisfied with trans-
" mitting this affair to his Lordship only, but,
" as if he thought fame was too idle in spread-
" ing the news of his management, he wrote
" another letter on the same subject to the
" Secretary of State, London; and several
" more to other gentlemen, his friends and
" acquaintance; so that in three or four days,
" there was scarce an inhabitant in North
" Britain that had not received the welcome
" report of M'Gregor's imprisonment.

" Rob Roy in the meantime, was employ-
" ing his thoughts about forming a scheme
" to regain his liberty; and having resolved
" upon one that carried an air of success, it
" was presently put in execution.

" He gained the hearts of his guard, by
" frequently calling for large quantities of
" brandy and other strong liquors, of which
" he had been accustomed to drink so hearti-
" ly, that not a little would disorder him.
" The glass was handed about apace,—the
" soldiers drank freely, and so did Rob
" Roy himself to their thinking; but he ge-
" nerally deceived them, by letting the liquor

"run through his beard; which the reader "may remember was of an extraordinary "length. He was so far from appearing "discontented at his present circumstances, "that he was almost continually diverting "the company with comical old songs and "pleasant stories of his own adventures; not "forgetting at proper intervals to insinuate "to them that he had a profound respect for "the Duke, their master, and that his Grace "had no indifferent regard for him.

"These artifices, corroborated by the "charge that the Duke had already given "them to treat him with civility beyond the "condition of a common prisoner, produced "the effect that M'Gregor desired. They "vainly thought that both his will and inter- "est were so united with his Grace's plea- "sure, that there was not the least danger of "his escape. This made them so incurious "in observing his management, that he found "an opportunity of bribing a servant to be "ready next morning in a neighbouring "wood, with an able horse, and what else "was necessary for his intended flight.

"The night was wasted in drinking, swear- "ing, roaring, and all that a sot calls plea- "sure; but when morning appeared, Rob "Roy told his guards that he had a favour to

" beg of them; they were eager to know what
" it was, (as intelligibly as the fumes of the
" brandy would let them,) that they should
" think themselves the most ungrateful dogs
" in nature, if they denied any thing that was
" reasonable to a gentleman that had shewed
" himself so generous. He thanked them
" for their civility, and added, that he had
" reason to believe, his great strength and
" preservation of his health were chiefly ow-
" ing to a practice of bathing himself every
" morning; and therefore hoped that they
" would not deny him the liberty of continu-
" ing a custom which he had been used to
" from his infancy, and especially since the
" omission of it might be of ill consequence to
" him. They without the least scruple, com-
" plied with his request, and readily attended
" him to a river that ran along by the side of
" the wood in which he had given orders for
" a horse to be ready. He plunged into
" the water, and bathing himself as usual,
" came out, seeing no sign of the horse, and
" returned with his guard to the prison.

" They were no sooner got in, but as a
" gratitude for the favour they had granted,
" he gives orders for a bowl of punch; which
" being brought before them, they welcomed
" it with loud acclamations of joy, and the

" cup ran merrily round with a 'health to " the Duke, and Captain M'Gregor.' But " in the height of their carousing, Rob Roy " puts his hand into his pocket, and in a " seeming consternation, tells them he had " lost his pocket-book since he went out last,— " that there were notes in it of great value, " besides some particular memorandums that " nearly concerned the Duke. They, (as " drunk as they were) expressed a great con- " cern for his loss, and unanimously offered their " service to go with him, and look for it. He " thanked them, and accepted their kindness, " —led them towards the river—and while they " were diligently searching the grass, he sud- " denly called to them, and bid them give " over. They looked up, and were surprised " to see him well mounted. 'My humble " service to the Duke your master, (says he) " and pray assure his Grace, that I shall take " all opportunities of returning the favours he " has obliged me with.' He spoke, and set- " ting spurs to the horse, they were left in the " utmost confusion, cursing one another, and " damning the blood of the pocket-book. The " news of his escape was quickly carried to " the Duke, who ordered the poor intoxicated " sinners into custody, and severely punished " them for their negligence. The dragoons, that

"that arrived soon after with orders to convey
"the prisoner to Edinburgh, were obliged to
"return without him; and his Grace's con-
"duct in the affair was for a considerable time
"after the common subject of lampoon.

"Rob Roy thus escaping, took his way to-
"wards his former place of residence, from
"whence he had been so lately decoyed; but
"night overtaking him, he put up at the house
"of a poor farmer, who, as it happened, was
"a tenant to the Duke we last mentioned."

In the year 1715, Rob Roy, with 300 men, joined the rebels under the Earl of Marr. He had been denounced by Government as a suspected person at the very commencement of the insurrection. According to Campbell's account, in his "Journey from Edinburgh to "the Highlands," * Rob was at this time entitled to take the command of the clan Gregor in the absence of his brother the Laird of M'Gregor, and the Chief of the name. He was present at the indecisive battle of Sheriffmoor, but took no part in that arduous and doubtful conflict. His conduct on this occasion has excited general surprise, and much indignant criticism. The doubtful, and of course unfortunate result to the clans of this memorable day, has been ascribed, by compe-

* Vol. 1. p. 124.

tent judges, to the wavering and treacherous policy of this adventurer. * He has been charged with an unprincipled disregard of the cause in which he affected to embark, and a love of the plunder, and not of the glory to be derived from the enterprise. His mercenary motives on this occasion have been commemorated in the following rude verses:

" Rob Roy stood watch,
" On a hill for to catch
" The booty for ought that I saw, man ;
" For he never advanc'd
" From the place he was stanc'd,
" Till nae mair was to do there at a', man."

He is said to have remarked, when the fortune of the day became declared, " If they " cannot do it without me, they cannot do " it with me ;" upon which he left the field.

But his apologists have given a different account of his motives and conduct. His friend and patron the Duke of Argyle supported the Government; and Rob, it is pretended, could neither embark in a cause of which he did not approve, nor openly resist a patron whom he durst not offend.—But his conduct, and that of his followers, immediately after the battle, gives but too much countenance to the opinion, that plunder was as

* Campbell's History of John Duke of Argyle, p. 205.

usual their whole object in assembling. They retired to Falkland; and on pretence of levying contributions from the king's friends, gratified their own rapacity; after which they withdrew to their mountains, loaded with spoil, and continued in arms to the terror of their neighbours.—Rob Roy and the whole clan Gregor were specially excepted from the act of indemnity which was passed upon the close of the rebellion.

The caprice of this singular being was conspicuous on all occasions. A Mr Ferguson, an unpopular person as we are informed, was the minister of Balquhidder during Rob's ascendency. Out of compassion for the reluctant parish, which was threatened with law proceedings for augmenting the minister's stipend, Rob generously interposed, and exacted from the clergyman a written declaration that he should never resort to any measure of that description. He promised the minister, for his forbearance, an annual present of a fatted cow and sheep; and it is said, that he scrupulously kept his word.

It is certain, however, that the generosity for which he has been celebrated by his admirers, was in him but a capricious and transient feeling. Of this a remarkable instance has been recorded. It has been already men-

tioned, that he was in the regular practice of levying the odious exaction of black-maill. A Mr Stirling of Garden was one of the persons whom he chose to consider responsible to him for this illegal prestation. Mr Stirling it seems had failed to make regular payment; and Rob, in the absence of himself and his wife, arrived with a party, and took possession of his mansion. When Mr Stirling and his lady returned, Rob demanded payment of the tax; which Mr Stirling refused. Rob instantly seized one of the children, presented it to the trembling parents at a high window in the building, and threatened to precipitate it over the rocks, if his demands were not complied with. Mr Stirling had no alternative but to yield to the violence of the oppressor.

It is said that M'Gregor, although powerful and dexterous, was not fond of personal contention. He fought more than one duel however; of which some particulars are recorded by the Reverend editor of the History of Stirlingshire.—He had a brawl in an ale house with Cunninghame of Bolquhan. Small swords were procured, and the parties engaged. But Cunninghame at once evinced his superior dexterity; and Rob instantly dropped his sword, and yielded to his more expert antagonist.—When far advanced in years, he had

another affair of the same kind with Stewart of Appin, which was decided near the church of Balquhidder. Rob was worsted in this instance also, and declared that he should never make another experiment of his skill.

But perhaps there is no anecdote more characteristic of his spirit and disposition, than that which is recorded, of his behaviour on his death bed,—if indeed we can trust its authenticity. A person came to visit him with whom he had formerly had a feud. Rob declined seeing him in bed, and requested that his clothes and broad sword should be brought him, as he could not bear to be seen by an enemy in his present fallen condition. While the parties were together, the priest arrived; when he conjured Rob, as he expected forgiveness from above, to bring his mind in his last moments to forgive all his enemies. Rob at first demurred to this expostulation; and the priest, to enforce it, quoted the appropriate part of our Lord's prayer. Rob answered upon this, " Ay, now ye hae gien me baith " law and gospel for it. It's a hard law, " but I ken it's gospel." Then turning to Rob Oig his son, he said, " My sword and " dirk lie there. Never draw them without " reason, nor put them up without honour. " I forgive my enemies; but see you to them.

"or may——" and he expired.—He died at his house in the braes of Balquhidder, and is buried in the church yard of that parish. There is no monument to his memory. A common grave stone without inscription covers his remains, with no other ornament than a sword *in pale*, rudely executed.

Rob Roy was born a protestant; but when misfortunes overtook him, he became a convert to the catholic faith. His confession is said to have extorted many groans from the priest, and a large sum of money from the penitent. But whatever his momentary impression of religion may have been, it had no root in principle, and no enduring effect upon his character; for it was not long after this solemn scene, that he set out on a predatory excursion to the north, and returned loaded with booty.—He is said to have been honourable, and even generous, in all those transactions in which his prejudices or profession did not interfere,—merciful and forbearing, notwithstanding his superiority in address and physical force,—and modest and unassuming, although not unconscious of the loud, though equivocal fame which his exploits had secured for him.—All this may be easily admitted; for there still remains more in his history and character than his apologists will ever be

able to explain; and much more than a liberal spirit of censure would wish to explore, in order to justify that sentence of condemnation which it is forced to pronounce.

Rob Roy had five sons, Coll, James, Ronald, Duncan, and Robert. Of Coll the eldest, we have not been able to learn any thing; and of Ronald and Duncan there is not much known, nor do they appear to have greatly distinguished themselves, except by becoming accessory to the outrages for which James and Robert were tried, and the latter brought to condign punishment.—Of James and Robert the most authentic and valuable information is unhappily to be found in the records of the High Court of Justiciary, of which an interesting portion is now submitted to the perusal of the public. An attentive consideration of the following trials, and of other details which have been principally derived from the same authentic source, will probably undeceive the public with regard to the alleged persecution of the sons of Rob Roy; which has been so confidently charged upon the government of the time, by persons who to all appearance had never looked into the proceedings, and who at any rate have hazarded many statements which are directly contradicted by the

evidence taken in the supreme criminal Court, with all its peculiar and most laudable solemnities.

Rob Oig, or the younger, as the gaelic word signifies, appears from his earliest youth to have discovered a turbulent and reckless disposition. He is said to have been rather of a slender and feeble make,—but the weakness of his body was more than compensated by the fierceness of his spirit.—A person of the name of M'Laren, a kinsman of the M'Gregors, though of a different tribe, had given them offence by his proposal to take a lease of some land in the possession of the M'Gregor family. Rob Oig, who was then between 16 and 17 years of age, went deliberately with a loaded gun to a field where M'Laren was ploughing, and approaching from behind, fired upon the unfortunate man, and wounded him so severely that he died the same evening. As the circumstances of this affair have been grossly misrepresented, we shall give a summary of the proceedings as they appear upon the record.

It seemed improbable that a lad of Rob's years should have committed a crime of this nature, and in revenge of a family quarrel, without the countenance of his relations. Various circumstances also transpired which

appeared to implicate James and Ronald, the brothers of the actual murderer; and accordingly, they were all indicted along with Callum M'Inlister, a retainer of the same tribe, against whom also there existed strong grounds of suspicion. The murder was charged as having been committed by a conspiracy among the pannels;—and the motive assigned for the enterprise by the prosecutor, was the interest which Ronald had as the tenant of Kirkton, to prevent the deceased from competing with him for the lease.—The indictment stated, that the pannels had, on more than one occasion before the murder was committed, threatened that Rob would shoot John M'Laren so soon as he got from Doun a gun which had belonged to his father Rob Roy. The pannel M'Inlister was also charged with having threatened to kill the deceased with a dirk, if he attempted to get a lease of Ronald's possession.—The libel then stated, that the said Callum came on the day when the murder was committed, along with Robert M'Gregor, to the field of Drumloch where the deceased was ploughing; —that they had with them a gun with powder and slug shot;—that Callum charged the gun, and laid it down beside Robert, who immediately took it up,—approached the spot

where the deceased was ploughing,—fired upon him, and wounded him so severely in the thigh that he soon after died.—Callum was a pretender to skill in surgery;—and upon being sent for to dress the wound of the deceased, he refused to interfere,—on pretence of being ignorant of the species of shot with which the gun had been loaded; and this too, although he had just before charged it with his own hands.—The libel then stated, that Robert, after perpetrating the deed, retired to his mother's house in the neighbourhood, where he boasted that he had drawn the first blood of the M'Larens.—That James M'Gregor and Callum M'Inlister afterwards expressed their warm approbation of the crime, and their wish that one Donald M'Laren, a friend and kinsman of the deceased, had shared the same fate;—and that they threatened vengeance on the M'Larens if they should dare to bring the murderer to punishment.

The pannels were charged besides as being notorious thieves and resetters of stolen goods; and special acts of theft alleged to have been committed by them were enumerated.—James was charged with having stolen a cow from one M'Callum in Strathfillan, and having broken the prison to which

he was committed for this offence. Ronald was accused of having stolen a horse from one Duncan Miller,—other two horses from a woman of the name of Eupham Ferguson,—and a cow from one John Stewart,—and with having threatened the man's life when he attempted to reclaim his property. These offences were recapitulated, not as substantive charges under the indictment, but as matter of evidence with regard to the general character of the pannels,—and do not appear therefore to have been very regularly introduced into the indictment:—But a heavier and more pertinent charge against the pannels still remained. They were accused of having, soon after the murder of John M'Laren, houghed and killed, under cloud of night 40 head of young cattle belonging to his kinsman Donald,—a crime which the prosecutor contended was rendered capital by a special statute on which the indictment was founded.

Rob Oig, the principal party in this accusation, did not appear, and was accordingly outlawed; but James and Ronald, together with Callum M'Inlister, were apprehended and brought to trial. Their defence appears to have been conducted with great legal ability; nor is the slightest vestige to be found

in the proceedings, of that spirit of partiality and oppression which has been so hastily insinuated. Duncan Forbes of Culloden was the prosecutor; and his name alone is a triumphant refutation of the idle calumny.

The defence pleaded for James to the charge of murder was, that he had no direct participation, either by word or act, in the horrid transaction; and that he had been absent from the scene, and removed at the time to a distance of 40 miles in Argyleshire. —The defence maintained for Ronald against the same charge was nearly of a similar nature,—that he had no immediate connection with the deed; and that, if he did chance to see his brother before and after the murder, it was by mere accident, and in the house of their mother.

Such was the defence maintained in point of fact; but a long and learned argument was also offered for the pannels upon the law of the case, and the relevancy of the indictment. In this pleading it was contended, that the previous threats alleged to have been uttered by the pannels, did not apply with precision to the facts charged in the indictment; that it was quite irrelevant and inadmissible, in a libel for murder, to charge the accused with being habite and repute

thieves; that the youth of Robert M'Gregor, the actual murderer, was a circumstance of no importance, to infer the guilt of conspiracy against his relations—for it is in youth that all the passions are most intemperate: That the alleged approval of the murder, after the fact had been committed, did not warrant a charge of art and part by the law of Scotland; and that the previous menaces were of no weight in raising any presumption against the accused, because they were to be executed only if the deceased obtained possession of Kirkton;—an event which never happened.—Ronald also offered to prove, as a separate defence, that he had warned the deceased of the danger to which he was exposed, from the ungovernable and impetuous temper of his brother Rob.—Both the pannels, besides insisting much on the irrelevancy of the charge of their being habite and repute thieves, denied the particular acts of theft alleged. James denied also that he had ever broken prison; and stated, that on the occasion alluded to he had been confined, not in a prison, but in an ale house, from which he had been discharged by an order from the commander in chief.—As to Eupham Ferguson's horses, which Ronald was charged with having stolen, it was alleged, that they had been

lawfully purchased by his father Rob Roy, and afterwards publicly sold in open market; while Stewart's cow was said to have been seized, not theftuously, but in virtue of the right of hypothec, which the M'Gregors possessed as the proprietors of Stewart's farm.

The Court pronounced a special interlocutor, upon considering this debate, finding the more serious charges made against the pannels relevant,—as they certainly were,—and giving effect to their defence against some of the minor and more irregular charges made in the indictment.

The evidence taken upon the trial leaves no vestige of doubt as to the guilt of Rob Oig in the murder of M'Laren, whatever opinion may be entertained with respect to the participation of the pannels his kinsmen.

Dugald Keir, the first witness examined, swore that he saw Rob with a gun on the day of the murder;—that suspecting he had some bad purpose in view, he took it from him, and spilt the priming: That soon after, he heard the report; and on turning round saw M'Laren fall: That he pursued and came up with Rob, but durst not apprehend him, as the latter drew a pistol from his side and threatened to fire upon him: That at this time Rob said, "Let M'Laren take that for

"disturbing my mother in her possession."— The same witness swore, that the wound inflicted on M'Laren was of a very serious kind; and that the pannel Callum, when applied to in his chirurgical capacity, came without his instruments, and probed the wound with a "kail castik,"—which the witness swore was no uncommon practice among the highland surgeons of that period!

Many other witnesses established the guilt of Rob.—Robert Murray of Glencarnoch, who indeed had been a victim of the oppressions of the M'Gregors, and entertained no friendly disposition towards them, but whose evidence was received by the Court *cum nota*, as it is called,—swore that he had examined the wound of which M'Laren died: That the same night he called at the house of Rob Roy's widow: That he saw Rob Oig there with a gun: That he asked him why he had shot M'Laren? To which Rob answered, that the deceased had attempted to get his mother's possession; and that if the M'Larens persevered in giving offence, their misfortunes were only beginning.—The witness stated, however, that he had heard from the deceased himself, that Ronald had warned him of the danger he run from the violence of Rob's temper, which the witness described as "*mad*

" *and quarrelsome, and given to pranks.*" He swore besides, that the gashes inflicted upon Donald M'Laren's cattle, must have been given by a stronger arm than Rob Oig's.

A good deal of evidence followed with regard to the threats uttered by Ronald against the deceased, and of which it is not easy to collect the import; as on the one hand it is clear, that menaces of some sort had been expressed by the pannel against M'Laren; and on the other, it is not less certain, that Ronald had given the deceased warning of the desperate projects of his brother Robert.

There is also a good deal of evidence as to the character and reputation which the pannels held in their own country. Donald and Patrick Stewart, and Alexander M'Laren swore positively, that the pannels were reputed bad men, common theives, and harbourers and resetters of thieves. Other witnesses were more reserved on this point: John Stewart swore, "that the pannels have "bad characters; and have beasts not rightly "come by, and that might be speered after:" And Mungo Campbell,—that the pannels were thought in the country to be "resetters of "stolen goods; but that they were not in the "rank of the most notorious thieves."

Some other particulars of a curious nature transpired in the course of the evidence; Patrick Stewart swore, that sometime after M'Laren's death, he heard the pannel Ronald say he would support his brother Rob so far as the law would permit; although, from the detestation he felt for his conduct, he had hitherto avoided all communication with him. The same witness stated, that he was present at a conversation betwixt the pannel Callum, and Alexander M'Laren; when Callum proposed that M'Laren should grant his bond not to prosecute the murderer; and promised, that in the event of his complying, no more mischief would be done him by the M'Gregors; but M'Laren having refused, Callum remarked that he might repent it.—The same circumstances were sworn to by another witness, John Fisher, who represented Callum as having said, "That if that daft laddie Rob "were ta'en up, mair ill might follow."—It appeared from the evidence of Eupham Ferguson, that her horses had been forcibly seized by the M'Gregors in the first instance, although some promise of paying for them was subsequently made, which however was never fulfilled.—John Stuart again swore expressly, that his cow had been violently taken from him by Ronald; but Elizabeth Fisher,

the single exculpatory witness adduced by the pannels, cast some doubt upon the nature of this transaction.

The jury by their verdict, found the accession of the pannels to the murder of John M'Laren' not proven ;—they found also the charge of houghing Alexander M'Laren's cattle not proven. They found, in the same terms as to the special acts of theft libelled in the indictment ; but they were unanimous in thinking, that the charge of being habite and repute thieves, was made out against the pannels, James and Ronald M'Gregor ; whom the court accordingly, by their judgment, ordained to find caution, each to the amount of £200, for their good behaviour for seven years.—The pannel Callum M'Inlister, was dismissed from the bar.

The evidence taken in this trial can leave no doubt on any rational mind, as to Rob Oig's guilt of the murder of M'Laren with which he was charged : but as he did not appear to take his trial, he was of course outlawed.—It is curious to observe how much the facts of this case have been misunderstood and misrepresented. In a note to "Campbell's Journey from Edinburgh to the "North," it is gravely stated, that Rob Oig *was acquitted* of the murder of M'Laren ; al-

though, in point of fact, *he was never tried* for that crime.—It has been stated also, that Rob Oig was outlawed when only 12 years of age; because, by an unlucky accident, his gun went off and wounded a relation;—and this sentence of outlawry has been mentioned as a proof of the violence with which the M'Gregors were persecuted.—The proceedings in the trial prove, that Rob was not 12, but betwixt 16 and 17 years of age when he was outlawed; and that it was no unlucky accident with which he had been connected, but a deliberate and premeditated murder.—This desperado, when he found that his conduct was to be made the subject of a serious enquiry, was advised to retire to France; and from the proceedings in the trials published in this volume, we learn, that he was present at the battle of Fontenoy.

His brother James having been acquitted from the charge of conspiring in the murder of M'Laren, remained in Scotland. In 1745 he took part in the rebellion, and with the assistance of his kinsman Glengyle, he is said to have surprised the fort of Inversnait, and with 12 men only to have made 89 of the garrison prisoners.—He afterwards joined the rebels with six companies of his clan; and had his thigh bone broken at the battle of Prestonpans.

He did not however follow the Adventurer in his invasion of England, but joined him at Culloden; and, along with persons of greater merit and higher distinction was afterwards attainted.

Rob Oig had in the meantime returned to Scotland; and along with his brother James had once more engaged in the violent courses to which the family was addicted. He had been married to a lady of the family of Drunkie; but was now a widower. At the instigation of his brother James, he formed the resolution of making his fortune by a second marriage; and as he had but little chance of succeeding by honourable means, branded as he was by a sentence of outlawry for the most odious of crimes, he determined to put in practice all the resources of that rude policy for which his clan had been hitherto distinguished. The progress and result of this fatal interprise, in which James acted the part rather of a principal than a subordinate agent, are fully detailed in the following trials.

The unhappy victim of the ravisher was Jean Key, the heiress of Edinbelly, who was in possession of a considerable fortune at her own disposal. She was young, and had not been more than six weeks a widow when the outrage recorded in the succeeding pages was

perpetrated upon her. The case of this unfortunate woman was far too flagrant to escape notice; and a diligent search was accordingly made for the offenders; who were at last secured and brought to trial. James was seized in the first instance; and it was not till after his trial had been concluded, that Rob was apprehended and brought to justice.—He was apprehended at a fair at Gartmore by a military party from Inversnait, sent to Stirling castle on the 19th, and conveyed to Edinburgh on 26th May 1753.

James was brought to trial upon the accumulated charges of *Hamesucken, Forcible Abduction, Forcible Marriage*, and *Rape*; and it appeared from the evidence, that in all these crimes, perpetrated upon the unfortunate Jean Key, (except the last,) he had been the chief actor. He had the benefit of the ablest assistance which the bar could afford; and no plea which could be maintained in law was omitted. An objection was taken to the charge of Hamesucken in the indictment, as involving a capital offence, upon the ground, that the invasion of Jean Key's house had not been committed for the purpose of beating or wounding her person; but this plea was disregarded by the Court, for the obvious reason,—that whether the violence done to the person

be the subordinate or ultimate object of the intrusion, the crime of hamesucken, as a capital offence, is equally committed in either case. This is the settled law of Scotland, and was recognised as such in the recent case of one Gray, tried at Glasgow in the year 1800.*—The Court also, after considering the able pleading for the pannel, determined, that the alleged acquiescence of Jean Key in her misfortunes could have no effect in mitigating the punishment for the prior crime of hamesucken; and this also appears from the respectable author already referred to, to be at this moment the law of Scotland.—We have thought it worth while to notice these particulars, as they afford an answer to the unfounded charges which have been hazarded against the proceedings in the case of James M'Gregor, who has been erroneously represented as a victim to the tyranny of a harsh and persecuting power.

Upon the proof adduced against the pannel, in support of the serious charges in the indictment, we need not say any thing;—the whole case is now before the public, and an impartial judgment will be formed. We can see clear proofs of the pannel's guilt in the

---

* Vide Burnett on Criminal Law, p. 88 to 90.

course of the evidence, but no symptom of partiality or oppression; and are not quite disposed to take the pannel's word for the latter accusation against the Scottish agents of the Government, although it is boldly stated in his memorial to the Pretender. The verdict returned against him by a jury of his countrymen, extremely tender as it appears of his life, and solicitous about his fate, is now also laid before the reader; and he will judge whether, with the subsequent declaration of the jury, it betrays any desire to make a sacrifice of this unhappy man.—The story of his escape, collected from the notices published at the time, will also be found in this volume; and the reader may be left to admire the dexterity with which he eluded the vengeance of the law.

When James M'Gregor made his escape from Edinburgh, he travelled in disguise, and directed his course towards England. On the evening of the fourth day he found himself benighted upon a moor in Cumberland; and heedless of his steps, which he could no longer guide, he retired into a wood. He heard the sound of voices at a distance, and ignorant whether his pursuers might not be at hand, prepared to stand on the defensive. Observing a ray of light to issue from

the spot from which the sound proceeded, he cautiously advanced towards it, and observed an old woman holding a torch to three men who were placing panniers on their horses. Among these men he recognised an old acquaintance, a tinker of the name of Marshall, whom he had befriended in the north; and who now returned his good offices by protecting and sumptuously entertaining him for three days in his cave, and afterwards accompanying him till he got safe on board a ship, and departed for the Isle of Man. From this place he retired to France, where he spent the remainder of his days.

He had now become a fugitive in a foreign land; and his fate was every way as severe as his crimes had deserved. Reduced to a state of abject poverty, he applied for assistance to a leader whose condition was hardly more propitious than his own. He addressed a memorial to the Pretender, in which he represented himself as having escaped from *political persecution* in his own country; and added, that he had most important information to communicate. It is not known that this application was ever honoured with an answer—But an accident occurred which seemed to give M'Gregor a chance of being

restored to the favour of his lawful government, and the respect of his countrymen. Allan Breck Stewart, the actual murderer of Campbell of Glenure, had, like other desperados, fled to France. James M'Gregor was solicited, by an agent of the Government, to assist in apprehending this detestable felon; and had an assurance given him of protection and security if he succeeded. But Allan Breck eluded his vigilance; and becoming aware of his designs, threatened to assasinate him. The unhappy M'Grego made a fruitless appeal upon this subject to his chief, who had also expatriated himself after the year 1745,—but he had now lost his only opportunity of propitiating the British Government, and being restored to his country.

It would appear, however, that emboldened by the confidence apparently reposed in him, he had solicited a passport, repaired to London, and laid the case of his family before the British Ministry. But he complains in some of his letters to his chief, that the Duke of Argyle and Grant of Prestongrange, Lord Advocate of Scotland, had thwarted his views, and contributed to impress Government with the notion, that the clan Gregor was universally popish and disaffected. He states in

the same correspondence, that Government had offered him, on condition of his submitting to a mock trial for his crimes, some lucrative, but degrading employment; but that he had refused to accept the offer as unsuitable to his character and descent, although he expressed his readiness to serve the Government—such was the value of his attachment to the Stuarts—in any capacity which would not dishonour his birth. Upon this he was ordered to leave England; and returning to France in extreme poverty, he solicited the permission of his chief, to whom he acknowledged the most humble duty and obedience, to embark in trade. It would seem however, that his intrigue with the British Government had brought him into suspicion with his jacobite friends; for his chief, so far as can be gathered from the documents which have been published, treated him with coldness and neglect. M'Gregor remonstrated, but apparently without effect; and at last, reduced to extreme necessity, solicited the influence of his chief to procure for him employment even in the most degrading occupations,—and condescended to recommend himself by boasting of his skill in *breeding horses*. But he did not long survive this sad humiliation, for he died in France within a

few weeks after the letter referred to was written.

His brother Robert was doomed to exhibit in his own person a still more degrading and fatal catastrophe.—On the 21st July 1753, he was indicted to take his trial before the High Court of Justiciary, both for the murder of M'Laren, and for the frightful outrage committed upon Jean Key. The trial was originally fixed for the 6th of August, but was for some reason postponed till the 27th January, 1754, when a jury was impannelled and the proof adduced. The trial lasted from betwixt seven and eight o'clock in the morning, till five in the morning of the next day.—The jury were inclosed from five till ten o'clock, after which they returned the verdict of *Guilty* against the pannel, which will be found recorded in the following pages.

It is impossible to peruse the evidence upon the trial, without being convinced of the justice of this verdict. All doubt upon the subject is indeed removed by the confession of guilt made by the pannel himself upon the scaffold, and which was recorded in the journals of the day. We cannot therefore concur in opinion with the Reverend Editor of the

History of Stirlingshire, who asserts,* that the charge against Rob "was rendered doubt-"ful," and that he was executed "*ostensibly* "*on that score*;"—that is, for having forcibly carried off Jean Key;—for nothing is more manifest from the testimony of every credible witness on the trial, than the violence and atrocity of the whole proceeding.—Other statements have been laid before the public upon this subject, which are still more remarkably at variance with the unimpeachable evidence of the record. In "Campbell's Jour-"ney from Edinburgh, &c." † it is stated, that Jean Key voluntarily cohabited with Robert, and acknowledged him as her husband; but that a proof of this important fact was rejected by the Court. An appeal to the record is decisive of the inaccuracy of this statement.—It is asserted by the same author, that it appeared upon the trial, that the abduction had been premeditated betwixt the ravisher and the pretended victim. There is not a vestige of evidence to this purpose, except that of a pitiful hire-

* Nimmo's History of Stirlingshire, M'Gregor Stirling's edition, p. 718.

† Vol. 1. p. 127.

ing—a highlander and a common chairman in Edinburgh—who tells his story about a message, on which he was sent to Jean Key with two rings;—a story which is at variance with the whole body of credible evidence in the case.—The same writer erroneously asserts, that *Rob* came to Edinburgh with his wife, conscious of his innocence; but that her friends persuaded the Court to sequestrate her, that they might have an opportunity of practising a sinister influence over her mind. This is erroneous in fact, and absurd in theory. It was not *Rob*, but *James* who came to Edinburgh with Jean Key: and it is needless to remark, that no influence could have prevailed upon the Court of Justiciary to act otherwise than with the purest integrity.—But it is scarcely worth while to explore the errors of this writer, who states that a charge of theft was permitted by the Court to be made in aggravation of the crime of forcible abduction alleged against Robert. The record shews that no charge of theft was made in this case; it is probable, therefore, that the author had got some obscure and imperfect account of the other trial of James and Ronald for the murder of M'Laren, and had confounded this proceeding with the trial for the rape committed upon Jean Key.—We

cannot therefore admit, that the proceedings in this case indicated any feeling of hostility on the part of government; or that they form a proof of any thing but the wholesome vigilance of the laws, in punishing a crime, or rather a series of atrocities, which, as the prosecutor justly stated, were a reproach to the age and country in which they occurred.

We shall conclude this account of the family of Rob Roy, with a recapitulation of some notices which have recently appeared respecting his nephew Gregor M'Gregor of Glengyle, who is said to have followed the steps of his kinsman with great fidelity. He headed an irruption of the clan into Drymen, —was a considerable collector of black maill, —and a frequent *lifter* of cattle. He assisted his cousin James M'Gregor in the attack upon the garrison of Inversnait; and with the aid of twelve men only, is said to have rescued a friend apprehended for treason, from an escort of no less than 40 soldiers. Like other unfortunate adventurers, he was *persecuted* (as it is called) after the rebellion in 1745, and retired to the Braes of Athole accompanied only by one attendant. Here he took up his residence in a cottage, where he was hospitably received as a friend of the Pretender; but the Duke of Athole, the heredi-

tary enemy of the Gregor clan, having discovered the place of his retirement, secretly introduced no less than six assassins into the house to dispatch him. Gregor went out to hunt the deer,—he had long hair and the day was wet, and on his return, he sat down by the fire side to dry it. His hostess, the Athole woman having become acquainted with the name of her guest, and the design of her superior, seized her unfortunate victim by the hair, and pulled him backward, while the assassins rushed on him to do their office. But the courage and activity of Gregor and his attendant disappointed their treachery: the whole of the assassins were either maimed or dispatched; and the desperate and treacherous woman who had betrayed her guests, and who dared even to interrupt them in making their escape, was instantly sacrificed to their vengeance. M'Gregor returned with his attendant to his own country, where he lingered for two days, and afterwards died of the wounds which he had received in this unexpected rencontre.——

We have now brought this hasty and unpremeditated sketch to a close. We cannot however take leave of the subject, without remarking, that the unfinished portrait which

we have given in the outset, is intended for the mountaineers of the last century, and bears no resemblance to the Highlanders of the present day. It is many years since the peculiarities, at least of the higher classes, have vanished, and all that was characteristic in their virtues and failings has been reduced to an uniformity with the ordinary manners of their country. They can no longer boast a distinct character; but melted down into the mass of society, they have individually contributed their full share to its industry and intelligence, and justly claimed a large portion of its distinctions and rewards.—Of Rob Roy himself we have spoken with moderation;—for what could induce any one to cast wanton insult on the memory of an adventurer who had spirit and generosity, and had drunk deeply of misfortune, and over whose excesses, such as they were, the lapse of a century has wrought a veil of oblivion? We have diligently collected the anecdotes related of him by his apologists and admirers, and left the reader to draw his own inference. Nor have we attempted curiously to fix the dates of a series of exploits, when, for aught we know, the very substance of the stories may be the work of the imagination.—With regard to his

sons, however, in whose adventures we recognize none of the generosity said to have been characteristic of the father, truth and reason have prescribed a different course;—for it is not right that the administration of justice should be libelled, when it exercises its salutary power in protecting the weak from the insults of the oppressor, and chastises a course of vulgar and sordid enormities, which have neither in their motive nor their execution any claim upon the forbearance of mankind.

TRIALS, &c.



TRIAL

OF

JAMES M'GREGOR,

BEFORE THE HIGH COURT OF JUSTICIARY, HELD AT EDINBURGH, JULY 13, 1752.

SEDERUNT.

The Right Hon. CHARLES ARESKINE, Lord Justice Clerk,
LORD MINTO,
LORD STRICHEN,
LORD ELCHIES,
LORD DRUMMORE, and
LORD KILKERRAN.

INDICTMENT.

Intran. JAMES M'GREGOR, *alias* DRUMMOND, *alias* JAMES MORE, prisoner in the Castle of Edinburgh, *PANNEL*, son of the deceased ROBERT M'GREGOR, *alias* CAMPBELL, *alias* DRUMMOND, commonly called and known by the name of *ROB ROY*: Indicted and accused at the instance of William

Grant of Prestongrange, Esquire, his Majesty's Advocate for his Majesty's interest, for the crimes of *Hamesucken*, and *Forcible Abduction of*, and *carrying away Jean Key*, daughter and sole heiress of the deceased James Key, portioner of Edenbelly, and relict of John Wright, lawful son of John Wright, portioner of Easter Glins; and other crimes at length mentioned in the indictment raised against him thereanent; and which indictment maketh mention, That whereas, by the laws of God, and of this and all other well governed realms, Hamesucken, or the violent entering into any person's house without licence, or contrary to the King's peace, or seeking or assaulting him or her there, where he or she was dwelling at the time, lying and rising nightly and daily, especially when that is done against a woman, or minor, a widow lately become such, and an heiress, with intent to do her a most heinous and atrocious injury: As also, the ravishing of women, or the forcible abduction, or violent carrying a woman from one place to another, with intent either to violate her person against her will, or to force her to a marriage, or the causing a marriage, or the form thereof, forcibly and by concussion to be celebrated as betwixt a man and a woman; and, under pretence of such forced marriage, the violating her person without the free consent, and against the will of such woman, especially when such woman was a minor, an heiress, and lately become a widow; and when the man so forced upon her for a pretended husband, and who afterwards violated her person upon that pretence, was of a character, circumstance, and situation,

utterly unbecoming or unfit for her, as being destitute of fortune, substance, or good fame, and reputed guilty of, or outlawed for, the most heinous crimes; are all, and each of them, crimes of the most atrocious, shocking, and most detestable nature, and most severely punishable. YET TRUE IT IS, and of verity, that he, the said James Drummond, had presumed to commit, and was guilty, actor, art and part, of all and every, or one or other of the foresaid crimes, aggravated as aforesaid, IN SO FAR AS, upon the 8th day of December 1750 years, in the evening thereof, under cloud and silence of night, or upon one or other of the days of the said month of December, or of the month of November immediately preceding, or of the month of January immediately following, Jean Key, daughter and sole heiress of the deceased James Key, portioner of Edinbelly, and relict of John Wright, lawful son of John Wright of Easter Glins, who had died in the month of October preceding, leaving the said Jean Key his widow, then a minor, going in the 19th year of her age, was then living at her own house at Edinbelly, in the parish of Balfron, and shire of Stirling, where she was lying and rising nightly and daily, under the protection of Almighty God, and of his Majesty's laws, and had then with her in her house, Janet Mitchell her mother, and Thomas Key, tenant in Boquhan, or Balquhan, her uncle, or father's brother, and Annabell Mitchell, relict of John Fairlie, her aunt, or mother's sister, with servants and other members of the family; and then and there the said house was beset, invaded, and vio-

lently entered by a crew of lawless ruffians, armed with guns, swords, durks, pistols, or other warlike weapons; amongst whom was he, the said James M'Gregor, *alias* Drummond, *alias* James More; and Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig; and Ronald M'Gregor, *alias* Campbell, *alias* Drummond; all three sons of the deceased Robert M'Gregor, commonly called and known by the name of Rob Roy; and which Robert, brother to the said James Drummond, at that time stood declared an outlaw and fugitive from the laws, by a sentence of fugitation pronounced against him by the High Court of Justiciary, upon the 16th day of July 1736, for not appearing to underly the law for the murder of John M'Laren of Wester Innernenty, in the parish of Balquhidder, and shire of Perth: And the said James Drummond, and his said two brothers, were then and there accompanied by Duncan M'Gregor, *alias* Drummond, in Strathyre, and then prisoner in the Tolbooth of Edinburgh, and a number of other persons, armed as aforesaid, his accomplices in a most lawless, barbarous, and wicked enterprise, to attack and invade the said Jean Key in her own house, and violently and forcibly to carry her away from the same, in order to compel her to be married to the said Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig, brother to the said James; and in prosecution of the said wicked design, he the said James M'Gregor, *alias* Drummond, *alias* James More, with his accomplices, and armed as aforesaid, came, at the time and place foresaid, to the house of the said Jean

Key, and having placed guards at the doors and windows of the said house, in order to prevent the said Jean Key from escaping, or any assistance being brought to her, he, the said James, and the said Robert and Ronald, brothers to the said James, and others of his accomplices, did violently and forcibly enter the house of the said Jean Key, and not finding her in the room where the said James first entered, he, or some other of his accomplices, did, with many horrid oaths and imprecations, threaten to murder every person in the family, or to burn the house and every person in it alive, unless the said Jean Key should instantly be produced to him; which obliged the said Janet Mitchell, her mother, to bring her out of a closet to which she had retired in great fear and terror in order to conceal herself; and that, as soon as she was brought into the presence of the said invaders, he, the said James M'Gregor, in a daring and violent manner, told her, that he and his accomplices were come there in order to marry her to the said Robert, his brother. And upon her desiring to be allowed till next morning, or some few hours, to deliberate upon the answer she was to give to so unexpected and sudden a proposal as a marriage betwixt her, then not two months a widow, and a man with whom she had no manner of acquaintance, after some further discourse or expostulation, he, the said James M'Gregor, or one or other of his accomplices, laid violent hands upon the said Jean Key, within her own dwelling house as aforesaid, and in a most barbarous, cruel, and most unbecoming and indecent manner, dragged her to the door,

while she was making all the resistance in her power, and crying out for help and assistance, and uttering many bitter lamentations; and after she was thus dragged to the door, the said James M'Gregor, or one or other of his accomplices, did, with force and violence, most barbarously and inhumanly lay the said Jean Key upon a horse, on which the said Robert M'Gregor, or one or other of his company, was mounted, placing her body across the horse upon the fore, or fore part of the saddle, after having tied her arms with ropes; and during all the time these horrid and barbarous outrages were acting, he, the said James M'Gregor and his accomplices, or one or other of them, did threaten, with execrable oaths, immediately to murder any person who should offer to give the said Jean Key the least assistance; and after having posted some of their number with their arms, as guards upon the said Jean Key's house, to remain for some time to prevent any persons coming out to alarm the neighbourhood, and procure assistance to rescue the said Jean Key, the said James M'Gregor and his accomplices, or some or other of them, did, in a violent, barbarous, and cruel manner, carry off the said Jean Key from her own dwelling house as aforesaid, lying across the fore part of the saddle, with her arms tied, while she was crying out for help and assistance, and making many bitter lamentations to the house of John Leckie, malt-man and brewer at the Kirk of Buchanan, about six miles distant from Edinbelly, where the said Jean Key continued to give all the evidences in her power of the deepest

grief and sorrow for her unhappy fate, and from thence, in a few hours, the said James M'Gregor and his accomplices carried her by force and violence to a place called Rueindennan, and from thence by water to some part in the Highlands, about the upper end of Lochlomond, out of the reach of her friends and relations, where she was detained in captivity, and carried from place to place for upwards of three months; and during this captivity, whilst her person and life were in the power of the said James M'Gregor or his accomplices, he and they, or some or other of them, in further prosecution of the wicked purpose for which they were guilty of the hamesucken and violent abduction aforesaid, caused to be celebrated the form of a pretended marriage, betwixt him the said Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig, brother to the said James M'Gregor, and outlaw and fugitive for murder as aforesaid, and they, without the free consent, and against the will of the said Jean Key. And further, under colour of consummating the said pretended marriage, but in reality for consummation of that series of horrid crimes in which the said James M'Gregor and they were engaged, the said Robert, the pretended husband, with the assistance of the said James M'Gregor, or of others of his or their accomplices, did, at some or other of the places where the said Jean Key was forcibly carried and detained, forcibly ravish the said Jean Key, by violating her chastity, without her consent and against her will: At Least, at the times and places foresaid, the said Jean Key, a minor and heiress, and a widow

for about two months only, suffered the most atrocious injuries of hamesucken, violent or forcible abduction from her own house into parts remote and distant from her friends and relations, and then a forcible marriage or form thereof, celebrated betwixt the said Robert and her; and last of all, a forcible violation of her person, by the said Robert, whereof the two latter injuries were intended as a completion of the two former, and the whole was begun, continued, and ended with the wicked and lawless intent of making the said Robert's fortune, by procuring for him, by force, the possession of the person and estate of the said Jean Key; and the said James M'Gregor was guilty, or art and part, of all; or one or other of the foresaid crimes. And for proving that he, the said James, was guilty as aforesaid, there would be produced against him by way of evidence, besides very credible witnesses, the following documents in writing, which were in the hands of the Clerks of the Court of Justiciary, where he might see the same: namely, *First*, Extract of a sentence of fugitation pronounced in a Circuit Court of Justiciary held at Perth upon the 25th of May 1751, against him the said James, and against Robert and Ronald his brothers, and five others of his accomplices, for his and their failing to appear to stand trial for the foresaid crimes, whereof the said James M'Gregor was then accused as above: *Secondly*, Extract of the sentence of fugitation pronounced by the High Court of Justiciary at Edinburgh, the 16th day of July 1736, against the said Robert, his brother, for not appearing to underly the law for the murder of the deceased John

M'Laren above designed: And *thirdly*, The principal or original and judicial examination and declaration of the said Jean Key, now deceased, taken and emitted by her, and subscribed by her hand, in presence of the Right Honourable Charles Areskine of Tinwald, Lord Justice Clerk, and Hugh Dalrymple of Drummore, one of the Lords Commissioners of Justiciary, upon the 20th day of May 1751, and thereafter judicially renewed and adhered to by her. And a further declaration made by her in the High Court of Justiciary at Edinburgh, upon the 4th day of June, in the said year 1751: And *lastly*, As one piece of evidence to prove that a pretended marriage was celebrated betwixt the said Robert, his brother, and the said Jean Key, there will be produced the following written evidence against the said James M'Gregor; namely, two bills of suspension, which were presented to the Court of Session in the name of the said Jean Key, and of the said Robert, brother to the said James M'Gregor, wherein he is designed her husband, complaining of an order or deliverance of the Court of Session, bearing date the 13th day of February 1751 years, proceeding upon the petition of Janet Mitchell the mother, and Thomas Key, the uncle of the said Jean Key, and thereupon appointing Alexander Stevenson, writer in Glasgow, to be factor upon the estate and effects of the said Jean Key; one of which bills of suspension was refused by the Lord Minto, upon the 5th of March; and the other was refused by the Lord Drummore, after advising with the Lords Justice Clerk and Elchies, upon the 18th day of

March, both in the year 1751; in both which bills, he, the said James, having about that time come to Edinburgh, acted as agent, solicitor, or manager, by employing, informing, and directing the writer and lawyer, who were advised with and employed about the same; and in both which bills the said James M'Gregor caused a tale to be told, or an account of the facts given by the said Jean Key, who then still remained under his power or influence; which account was contrary to the truth of the case known to himself and her; and was by her, the said Jean Key, thereafter disavowed, disclaimed, and denied at her examinations above mentioned, in presence of the Lords and Court of Justiciary; which two principal bills of suspension are also lodged in the hands of the Clerk of Justiciary, that he might see the same. All which, or part thereof, being crimes of a most crying nature, and a reproach to the age and country where they happen, should they go unpunished; or his being art and part thereof, being found proven by the verdict of an assize before the Lords Justice General, Justice Clerk, and Commissioners of Justiciary, He ought to be exemplary punished with the pains of the law, to the terror of others to commit the like in time coming.

Pursuers.	*Procurators in Defence.*
William Grant of Prestongrange, Esq. his Majesty's Advocate.	Mr Alex. Lockhart.
Mr Patrick Haldane, and Mr Alex. Home, his Majesty's Solicitors.	Mr Andw. Pringle.
	Mr John Grant.
	Mr David Rae.
	Advocates.

The libel being openly read, and after debate *viva voce* thereupon, in presence of the Pannel, Court, and Jury,

The Lords Justice Clerk, and Commissioners of Justiciary, ordained parties to give in informations on the relevancy of the indictment; which were accordingly given in and recorded.

[For these Informations see Appendix.]

July 31, 1752.

Intran.—James M'Gregor, *alias* Drummond, *alias* James More, pannel,—

Indicted and accused as in the former sederunt.

The Lords Justice Clerk, and Commissioners of Justiciary, having considered the indictment pursued at the instance of William Grant of Prestongrange, Esq. his Majesty's Advocate for his Majesty's interest, against James M'Gregor, *alias* Drummond, *alias* James More, pannel, with the foregoing debate thereupon, They find the crimes charged against the said pannel in the foresaid indictment, jointly and separately, relevant to infer the pains of law; but allow the pannel to prove all facts and circumstances that may tend either to his exculpation, or alleviation of his guilt; and remit the pannel, with the indictment as found relevant, to the knowledge of an assize. *

CH. ARESKINE, I. P. D.

---

* Although the following document forms no part of the proceedings in the trial, it is inserted here, as it seems material

August 3, 1752.

Intran.—James M'Gregor, *alias* Drummond, *alias* James More, pannel,—

Indicted and accused as in the former sederunt.

---

to a full history of the case. It is the first notice as to Jean Key found in the books of adjournal.

WARRANT FOR SEQUESTRATING JEAN KEY.

Edinburgh, 18th March 1751, in presence of the Lords Justice Clerk, Elchies, and Drummore,—The said day, JEAN KEY, portioner of Edinbelly, on whose account warrants had been issued out (as if she had been forcibly carried off and kept in captivity, and had been obliged to consent to a marriage with Robert M'Gregor, *alias* Drummond, and that she had been detained in captivity) against him, the said Robert M'Gregor, and others, his accomplices; having acknowledged that she had been with the persons against whom the warrants were granted, and was, upon the Monday after she was taken away from her mother's house, married with the said Robert M'Gregor, *alias* Drummond, by one who signs his name Smith, and that she inclined to adhere to the marriage: The Lords, upon consideration of the whole circumstance of this case, and in regard the said Robert Drummond stands fugitated in the Books of Adjournal, upon a libel against him for murder, and that neither he, nor any of his accomplices have appeared in public, but seem to lurk and abscond in order to evade justice: As ALSO, that it is apparent from the precognition produced, that her being carried off was begun *vi et armis*; and that there is a danger that impressions may yet remain with the said Jean Key; and that it is reasonable she should be lodged and sequestrate in some proper house, where her friends and relations may have access, that she may be at liberty to determinate with herself what is proper to be done in an event which is of so great consequence to her: They ORDAIN her, the said Jean Key, to be carried to the house of John Wightman of Maulsley, in the Potter-row, near Edinburgh, where she is to remain, and be entertained by him, until the 4th day of June next to come, unless the Court shall order her to be set quite at liberty before that time: And ORDAINS the said John Wight-

The Lords proceeded to make choice of the following persons to pass upon the assize of the pannel, viz.

John Watson of Muirhouse,
Andrew Chalmer of Nether Dalry,
John Forrest, merchant in Edinburgh,
Robert Baillie, merchant there,
George Stevenson, wright there,
Alexander Noble, candlemaker there,
Archibald Tod of Blackhill,
Sir John Inglis of Cramond,
John Yair, bookseller,
John Dunsmuir, merchant there,
Henry Hardie Baxter, in Edinburgh,
Robert Lithgow, merchant there,
Alexander Purves, merchant there,
Edward Caithness, merchant there,
Andrew Muat, merchant there.

The above assize being all lawfully sworn, and no objection to the contrary,—

---

man to allow access to her mother, friends, relations, and doers; but to such only as she pleases to admit, or chuses to speak with; that they may have free liberty to converse with her, but so as not to admit numbers of persons together; and he is to take care, that the said Jean Key neither be forcibly carried away from his house, nor allowed to go from it, without the consent or order of the Court: And for that purpose, the said Lords RECOMMEND to the Magistrates of Edinburgh, to grant their assistance, in order to make the present directions effectual; and for that [illegible] give command for setting sentinels on the said house, and to take other such precautions as they shall see cause; for doing of which this shall be a sufficient warrant.

(Signed) CHA. ARESKINE, *I. P. D.*

His Majesty's Advocate, for proving the libel, adduced, in the first place, the two declarations emitted by the deceased Jean Key, which were openly read in Court before the Judges, Pannel, and Assize; and whereof the tenor follows.

Edinburgh, the 20th of May 1751 years, in presence of the Lords Justice Clerk and Drummore,

Compeared JEAN KEY, relict of the deceased John Wright, second lawful son to John Wright of Easter Glins; who being judicially examined, declared, That on Monday the 3d day of December 1750 years, the declarant was pretty much surprised with a message sent to her, when she was at her own house at Edinbelly, from Robert Drummond *alias* Campbell, to let her know that he was in the public-house hard by, and desired leave to visit her. To which she returned an answer to this effect, that he was a man she had no acquaintance of, and that though she did use not to refuse a visit from neighbours, yet she would have none from such persons as he was. That upon the Saturday morning thereafter one Thomas Blair came to Edinbelly, under pretence of demanding some money for wood, said to have been purchased by the deceased Mr Wright, the declarant's husband; but, as afterwards appeared, this was done to see whether the declarant was at home or not; but though she very well knew that Mr Wright had purchased no wood [illegible] man by whom the demand was made, yet she did not suspect any design against her, but supposed it had been a mistake. However in the evening, about twilight, there came a man whom the

declarant had never seen, and knocking at the door, when it was opened, asked for quarters. The declarant told him she quartered no body, but that there was a public-house hard by; and when the stranger replied, he did not know the way to the public-house, the declarant sent a servant along with him, who learned in the house to which he went, that there were some people to follow him: That when the servant told this to the declarant, she began to suspect somewhat was to follow; and yet, when sitting with her uncle, aunt, and cousin, relating what she heard, she said and believed, that these M'Gregors were so much subdued now, that it was impossible they should attempt any thing by force. However, betwixt eight and nine o'clock at night, when her uncle went out a little at the door, to see what kind of a night it was, and the door was shut, he met with six men, as he related it afterwards, who threatened him, unless he ordered the door to be opened again; and as soon as the declarant understood what manner of persons they were, she went into a closet, and locked herself in. What passed at the time these six persons entered the house, she cannot tell; but she heard them threaten the people of the house to open the closet door, or if they did not, they would make it open; and so at last the door was opened, and the declarant saw James M'Gregor standing at the fire, whom the declarant had formerly seen in her father's house, and several other armed men in the room, who said to the declarant, she was the person they wanted; and pointed to Robert M'Gregor, and said, There was their brother, a young fellow, who in-

tended to push his fortune, and she must go along with him, and told her, She might either ride behind a man, or by herself upon a horse. To which she replied, She would neither go along with them on horseback, or in any other way; and her uncle, who was standing by, interposed, and said, It was a lawless and very irregular way for armed men to break in upon peoples' houses in the night-time; and if they had any design upon the declarant, they had better let it alone till day-light. They ordered him to hold his tongue; and when her cousin offered to come in, they told they would allow nobody to come into the room, and that it was in vain to attempt to resist them, because Glengyle was lying in the muir, ready at a call with a hundred men; that the declarant then said, that she did not believe Glengyle would be guilty of so scoundrelly an action as to meddle in so base an affair: That thereafter Duncan M'Gregor laid hold upon the declarant, and took her in his arms: That her aunt then endeavoured to hinder them from carrying her off; and the declarant laid hold of her uncle by the waist, but they loosed her hands, and carried her off by force, and put her behind a man on horseback, who she afterwards heard was Robert M'Gregor: That she threw herself off the horse, and by the fall got a wramp on one side, which was very uneasy for some time: That they then took her, and laid her across the horse-shoulders before one of the company; but the declarant being excessively pained with her side, and seeing she had no way of throwing herself off the horse, she sat upright, and the man held her in his arms, and

rode off about a mile, when they bogged their horses, going by bye-ways; and then the declarant saw that there were about eleven of them in company; and by that time, having no hopes of relief, she suffered herself to be put behind one of the company; and then they went on till they came to the mains of Buchanan, to the house of one John Leckie; and there she was ordered to a room, and one of the company staid at the door: That John Leckie's wife had formerly been acquainted with the declarant, but being then in such a pickle and distress, she did not at first know her; for the declarant had no shoes, or any thing about her, nor on her head, but on her mutch; and Leckie asking her, where she came from, and what had brought her there, not seeming to know her, she told him who she was, and that these men who he saw there, had brought her along with them. He said that he was sorry for it: That then the company that carried her off, prevailed with Leckie's wife to give her a clock, shirt, and pair of shoes, and then she was ordered to get ready, and they put her behind Robert on a horse, and carried her to a place called Reuindennan, upon Loch-lomond side: That there they staid all Sunday; and when the declarant was insisting with them to let her return, they told her it was vain, for they never would allow her to return during all the days of her life, but that her mother would come to her: That they staid there all Sunday night, but the declarant did not go to bed, nor sleep any: That next morning there was one brought from Glasgow, whom they called Smith, a priest, a little fair man, who they said

was to marry the declarant and Robert; and when she refused to marry him, they threatened to take her down to the Loch and duck her: That afterwards James and Robert carried her into the house, and the priest followed; and then the declarant again told them she never would consent to marry him, and told the priest he was but a scoundrel, that would pretend to marry one against her will and who would never consent. He said, he did not deserve the name, but that the affair must be put over, for he was in a hurry; and then Robert took her by the right hand, and James held her up by the waist, and the priest without asking her consent, uttered some form of words, declaring them married persons; and then the priest went off, as the declarant was informed, to marry another couple: That after a great deal of argument betwixt James and her, mixed with threats on his side, he forced her away to another house, and he and two women that were there, stript her, and threw her into a bed, and Robert was put to bed to her, and in this place they remained till next day: That that evening her aunt came to her, to whom she related all that had past, and alongst with her there came one of her own tenants, to whom, however, she said but little: That next day she was put into a boat, and carried to a place called Glen-falloch, where they staid a night in one William Campbell's: That from Glen-falloch next day they carried her to James' house in Glenduckat, where she remained about a fortnight, till the first party was sent out in quest of them: That there, though they had carried pretty fair to her after-

she came from Glenfalloch, they told her that she must acknowledge it was a marriage; and if her friends made any more work about them, they would carry her to France: That they posted up and down the country upon notice that there was a second party, till at last, about new year's day, she was carried to Callender, where they met with William Baird, who is married to a cousin-german of the declarant's, and William Graham, an acquaintance of his, and then they used all sort of means with her, to make her declare to them that she was very well satisfied with her marriage, and resolved to adhere; which she refused. Till this time they always pretended to be willing to let her go to Glasgow; but then, when she told William Graham and William Baird, that she was desirous to go along with them, they would not allow her, but carried her back to Glenduckat; and upon an account coming to them from Edinburgh, that a factory was gone out from the Lords, and that a party was to be sent to apprehend them, they carried her to Killin, and a minute was drawn out of a factory by Willian Duncan for her to sign, which she refused, although she was often told she behoved to do it: That next day they carried her to Balquhidder, upon notice by the way that a party was to be out that night; and they remained at Ronald's house there for some time: That when they saw she would not agree to signing the factory, they threatened her life; and that as Bandalloch, her uncle, and John Buchanan, younger of Glins, they believed were the three persons had instigated her mother to get parties sent to apprehend him,

they would try it there were as many men in the Highlands as would cut off their heads; and they thought it no fault so to do to them and her also, since they intended to take their lives: That afterwards they carried her to the kirk of Balquhidder, and the minister there, Mr Ferguson, asked Robert, pointing to the declarant, if he was married to her? who answered that he was; but he put no question to the declarant, but then said, if that was so, he had no more to say: That thereafter they advised among themselves, it would be proper to go to Edinburgh, and carry the declarant along with them. The declarant did not know what made them alter their resolution, but they let it alone for some time; and afterwards they went to Ackroston, and stayed there a week. That afterwards they came to a place called the Hole, belonging to Campbell of Torry; and there they met with a friend and tenant's wife of the declarant's, and to them, at the desire of James and Robert, she said she was very willing matters should be made up; and she was to be friends with her mother, and that there would be no more of the matter, for she was willing to adhere; which she did with the more seeming frankness, that they might the more easily agree to let her go to Edinburgh. That after this, they came to a resolution of going to Edinburgh, and James came along with the declarant: That after they came to Edinburgh, no threatenings were used against the declarant herself; but she was told by James, that she behoved to consent to the bills of suspension; and if she did not, threatenings were thrown out

against her friends, and upon that account, she gave the relation of what was past at the examination before the Lords of Justiciary, and in bills of suspension, prior to her being sequestrated. That, however, to do justice to Mr Graham and Mr Stewart, they knew nothing of the matter. And this she declares to be truth; and further declared she was not willing to adhere to Robert MacGregor as a husband.

(Signed) JEAN KEY.
CHA. ARESKINE.
HEW. DALRYMPLE.

Edinburgh, 4th June 1751:—In presence of the Lord Justice Clerk, and Lords Commissioners of Justiciary.

The which day, compeared judicially before the said Lords, Jean Key, before designed, and a declaration, consisting of nine pages, emitted and signed by her before the Lord Justice Clerk and Lord Drummore, upon the 20th day of May last, and also signed by them the saids two Lords, being read to her, she adhered to the same in every particular: And further added, that about a fortnight after she was forcibly carried away, as set forth in the foresaid declaration, a scroll of a letter, drawn up by James M'Gregor, bearing that she, the declarant, had wrote to the said Robert M'Gregor, inviting him to come and carry her off, was presented to her, and this scroll bore date 20 days before the time she was forcibly carried off; and the declarant was threatened, in order to oblige her to copy over that letter and sign it, and which

accordingly she did, and directed it to Robert M'Gregor; though the declarant, neither by word or writing, ever gave any encouragement to, or invited the said Robert, or any of those concerned, to come to her house; nor had ever any further communication with them, than what is mentioned in the foresaid declaration. That the declarant being afraid of the said persons obliging her to give any thing under her hand, had denied she could write, which they believed, until having occasion of conveying a letter to her mother, they discovered that she was but dissembling, when she pretended she could not write; and it was after this the said scroll was presented to her as aforesaid; and this she further declares to be truth.

(Signed) JEAN KEY.
CH. ARESKINE.

The said Lords, in regard the said Jean Key then wanted to be set at liberty, and the sequestration of her removed; did accordingly remove the same, allowing her to live where she thinks proper.

(Signed) CH. ARESKINE, *I. P. D.*

Thereafter, Robert Leith of Dunideer, depute-clerk of Justiciary, being solemnly sworn and interrogated, purged of malice and partial council, and having seen the above declaration the 20th of May 1751, which was read judicially as above, and signed by the said Jean Key, and by the Lords Justice Clerk and Drummore, he depones, That upon the 4th of June 1751, the said Jean Key appeared in a Justiciary Court held that day,

when he, the deponent, read over the above declaration and confession of the said Jean Key, of the 20th of May 1751, judicially in her presence; and at that time she adhered to the same in every particular; and gave the further declaration, the said 4th of June, which is libelled upon, and was also subscribed by her, and by the Lord Justice Clerk, in court; and that all this, as above deponed upon, he, the deponent, saw her do voluntarily, and without any compulsion whatever. *Causa scientiæ patet*; and this is the truth as he shall answer to God.—And the two extracts of the acts of fugitation libelled upon, bearing date the 16th of July 1736. and the 25th day of May 1751, being shewn to the deponent, and which are both signed by him as depute-clerk to this court, depones, That they are fair and true extracts from the Books of Adjournal. And this is also truth.

ROBERT LEITH.
CH. ARESKINE.

John Wightman of Maulsley, depones, That upon the 18th of March 1751, the deponent being married to a relation of the deceased Jean Key's, he was called upon to be present in the Lord Justice Clerk's house, when she appeared before him, and the Lords Elchies and Drummore, in relation to a suspension that was offered in her name of an act of factory granted by the Lords of Session, for levying the rent of her estate: That then the Lords thought it was proper she should be sequestrated into proper hands; and accordingly, by an order of the court, she was sent to reside in the deponent's

house, which at that time was in the Potter-row. That the deponent avoided, as much as possible, speaking with her on the subject of her misfortune; but one evening as he came home, she told him of a letter sent to her, signed Robert Campbell, and desired his advice upon it. They were then in a closet by themselves; and the letter being put in the deponent's hands, to the best of his remembrance, the contents were to this purpose:—That as he and she were man and wife, and had been married, he did not doubt but she would adhere to the marriage, and not bring misery upon him and his friends: That she also shewed him at that time, a letter signed James Drummond, and the deponent did then believe that it was the pannel, directed to her, which was much to the same purpose with the former: And further added, to the best of the deponent's memory, that he hoped she would not allow herself to be perverted by her friends. And depones, That the said Jean Key having asked advice of the deponent what was proper for her to do; his answer was, that he was not much inclined to give advice in an affair of so nice a nature; that she herself was best acquainted with the whole progress and circumstances of this affair, and if she desired, and was willing to adhere to Robert Campbell, she would say so; if, on the other hand, she was so dissatisfied with the usage she had met with, and had such a view of the consequence, as she did not incline to adhere, in either case she should declare her sentiments before the Judges: That her reply to him then was, that she would never adhere; and that she would rather

die a thousand deaths than do it: That the deponent then said, she must have been very ill used when her sentiments were such: Her answer was, that no woman had ever been used as she was; and that as to what had been reported, of her being carried off violently from her house, and forced to marry the said Robert Campbell, it was but too true: That the deponent thought it was too tender a point to enter into the circumstances of the rape that was reported to have been committed upon her, and therefore put no questions upon that point; but he asked her what her motives were, when such were her sentiments as above, to appear before the Lords in order to give her consent to the bills of suspension, and adhere to Robert Campbell as her husband? She said, it was not for the fear of any thing that could happen to herself, but for threats that they had uttered against her friends; and further, because the pannel had fallen down before her, and hoped and prayed that she would not ruin him, his wife, and seven children. The deponent again put it to her, whether, after the usage she had met with, better known to herself than to any other person, she was determined to adhere to the marriage or not; she then said, there was a fact she had heard since she came to town, which she did not know before; namely, that the said Robert Campbell had been fugitated by a sentence of the Court of Justiciary for murder, which she desired to know from him, whether it was true; the deponent said, he was not certain whether it was true or not, but that the Solicitor, Mr Halden, her lawyer, and Mr Go-

van, her agent, could best bring that matter to a certainty: That some days after this, the said Jean Key told the deponent, that she desired to be brought before the Judges, in order to declare publicly what her resolutions were concerning her adherence; and the deponent answered, he did not doubt but that might be brought about. Depones, That a friend in the country having about that time fallen ill, he was frequently absent from his family: That some time after what is above related, the deponent cannot take upon him with certainty to say how long, when he returned from the country, the said Jean Key acquainted him she had seen Mr Solicitor Haldan, Mr Govan, and Mr Tulloch, to the best of his remembrance, and who had shewn to her the records of the Court of Justiciary, in which she saw the act of fugitation against Robert Campbell, above mentioned: That next morning she again mentioned this subject to the deponent; and as one of the Books of Adjournal had been left with her, she desired him, the deponent, to turn up the act of fugitation, which he found out; and having shewed it to her, she read it for him, and expressed her surprise to find it was so, for that they had always denied it to her: That at several times she related most of the circumstances with regard to her usage, in the same manner as he finds them expressed in the declaration after mentioned: That she expressed a desire to have the sentinels removed, that were placed by order of the Court of Justiciary at the deponent's door, for that she was persuaded there was no fear that the M'Gregors would carry her

away from this town; and the deponent then told her, that the sentinels were placed there, not to restrain her liberty, and that, indeed, he believed there was no danger of her being carried off here; but that the sentinels being placed on by order of court, could not be removed until the Lords met. Depones, That upon the 20th of May, or the day before, Mr Govan acquainted Jean Key and the deponent, that the Lord Justice Clerk, and Lord Drummore, had agreed to attend, upon the said 20th of the month, to take her declaration as she desired; and in pursuance of that appointment, the deponent and his mother, who lived in family with him, at the desire of the said Jean Key, attended her to the Lord Justice Clerk's house; and when they came there, they found Lord Drummore with him; and at that time she emitted the declaration in their presence, which the deponent has now in his hands at deponing; and says, that it is written with his hand, from about the middle of the second page. And being asked what the reason was that it was written by his hand from the middle of the second page? depones, That Kenneth Tulloch wrote the preceding part of the declaration, but was suddenly seized with sickness, and was not able to go on with it; upon which, the deponent was desired by the Judges to finish it, the same being dictated by them; and that he was present when the Judges examined the said Jean Key from the beginning; and that, to the best of his judgment and memory, what was dictated by them, and taken down as it now stands in the declaration, was agreeable to, and the scope and

purport of what she expressed before them; and that the said declaration was emitted by her voluntarily and freely, and to the best of his thought the Judges endeavoured to expiscate the truth from her: That after the declaration was finished, it was read over to her, the deponent thinks by himself, before the Judges, and in her hearing; and being asked whether what was therein contained was the truth, and what she had declared; she said it was; and the deponent saw her and the Judges sign the same. And being farther interrogated, how long she had remained in the deponent's family before she had emitted the said declaration on the 20th of May? Says, That she had continued in his family for about two months, and when she emitted the said declaration, and for a considerable time before, she appeared to the deponent to be quite cool, and easy, and composed, and sober in her judgment. Depones, That upon the 4th of June 1751, she was again examined before the Court of Justiciary. That at that time he also went along with her, and heard the declaration above mentioned, whereof he had wrote a part as aforesaid, read to her in presence of the court, and heard her adhere to it judicially, and the same dictated by the court and written by Mr Leith. And the declaration as taken down by Mr Leith, and judicially signed by her and the Lord Justice Clerk as preses upon the said 4th of June, having been put into the deponent's hands, and having read the same over, he says, the same is agreeable to what was publicly declared by the said Jean Key; in presence of the court at that time. And being

further interrogated, depones, that prior to her emitting of this last declaration, she had, in private conversation, related to him what is said in her declaration concerning her being forced to write a letter as therein mentioned. And also depones, that he is married to a cousin german of Jean Key's; that he was not acquainted with her, nor had not seen her before the 18th day of March above mentioned, when she was by the Judges ordered to be sent to his house: That then she appeared to be in great disorder and confusion: That the deponent, for one instance, when she was sitting at dinner, observed her speaking to herself, and starting now and then. Further, the first time he saw her and her mother together was in Lord Justice Clerk's house, upon the foresaid 18th of March, and then, for some time she did not seem to take any notice of her mother; however, afterwards looking about, she said, Mother, or Oh! mother, are you there? They happened to be seated near to one another upon two chairs, during the time that the deponent has said she took no notice of her, and when she pronounced the words foresaid, there was some conversation between the mother and the daughter, which the deponent did not hear: That the confusion he has above mentioned, seemed to remain all that night that she went home with him; but next day she appeared to be somewhat easier: However, to the deponent's apprehension, she did not seem to be recovered from her disorder till eight or ten days after she came to his house, and from that time her behaviour was different from what it was during

the said ten days. Depones, That some time between the first and second declarations above referred to, the deponent having heard it reported that the people who carried her off had given her some drugs which had an extraordinary effect upon her, asked her what truth was in it. She answered, after she was first taken away they had given her something, and that the morning before she appeared before the Judges on the 18th of March, they had given her something that had confused her. And farther said, that during the time she was in their hands, they had taken an oath from her that she should adhere to the said Robert Campbell, at least that she should never consent to the prosecution of them or either of them; and therefore, though she should be very well pleased to see them brought to justice, yet she would have no hand in it herself. Depones, That she had related several particulars of her ill usage, and after the sequestration was loosed, when he, the deponent, was going to Glasgow along with the said Jean Key, after they had left Whitburn, the deponent, looking towards the Shott Hills, when they were near them, said it was a very wild place, and what if the M'Gregors should come upon them there; her answer was, God forbid! for she believed the very sight of them would kill her dead. Depones, That when she was ordered by the Judges to stay in the deponent's house, instructions were given him to give access to all her friends who should call upon her, and to the agent and the lawyer, Mr Græme and Mr Stewart, who acted for the M'Gregors, and to any other person whom she might

desire to see: That accordingly, access was given to the said Messrs Græme and Stewart at all times when they desired, and when the deponent was at home; but he remembers that once when he was in the country, as above mentioned, Mr Stewart called and desired to see the said Jean Key. His, the deponent's mother, took him in to the said Jean Key, but refused to leave them alone together, not having perfectly understood the directions that were given by the Judges; but she told them that the deponent was to be in town that night or next morning, and therefore a delay till he should return could not be of great moment: That the deponent accordingly came to town that evening or next morning, and having been informed by his mother what had passed betwixt her and Mr Stewart, he told her that Mr Græme and Mr Stewart were to have access to the said Jean Key by themselves, whenever they were pleased to ask it: And some time that forenoon went to the cross, and met with Mr Stewart, and excused what had happened upon his mother's not knowing Mr Stewart's being entitled to see the said Jean Key alone; and told him, that he and Mr Graeme would have access by themselves, whenever they pleased to demand it. That accordingly Mr Stewart came frequently, and Mr Græme sometimes, and had access to her whenever they desired, by themselves, and, as far as the deponent remembers, were never after that refused. Depones, That several different people called upon her that the deponent did not know. That in such cases he carried in their names to the said Jean Key; and some of them she

said she did not know, and had no business with them; others of them she knew, and desired they would be admitted; and some she said she knew, and would not admit them: That during her stay upon these occasions, the deponent acted according to the directions he received from the court, and the directions he received from her. Further depones, That she was allowed to go abroad, when she thought proper, sometimes with company, and generally it was so; nor does he remember of any instance of her going alone, except when she went to visit Mrs Shiells in the Potterrow, which she did several times; but that she went to church, and walked in the meadow, and that he constantly told her that she was under no restraint; and that she walked once or twice to Corstorphine: And further, he very early told her, and from time to time did so, when she staid with him, that if she had a mind to adhere to Robert Campbell as her husband, there was nobody to hinder her; but that she on all these occasions declared she never would adhere to him; nor could the deponent ever discover, during her abode in his family, any inclination so to do. And also says, that her behaviour in his family was modest, and such as became the character of a virtuous woman.—And upon interrogatories put by the pannel concerning her marriage, depones, That she told him, James, the pannel, had held her up; that is, as the deponent understood it, held her from sitting down, or going away, until the popish priest had performed the ceremony of marriage: And further, being desired to explain what he meant by saying, that Mr Haldane and Mr Govan were counsel and

agent for Jean Key? says, That he understood they were employed by her friends, which he thought was for her. And being also interrogated, Whether, when she related to him what is above, concerning her being compelled to write a letter, she mentioned any scroll laid before her, after which she was to transcribe in the letter; and whether she varied the same when she transcribed it? Says, That a form of a letter was laid before her, after which she copied; but made no mention to him whether she did or not make any alteration on it. And being interrogated for the pannel, If she explained to the deponent what the something was which she said had been given her soon after she was carried off, and on the morning of the 18th of March, which had confused her? Says, That she told him it was a liquid in which a powder had been mixed, given her in a little bowl or cup upon the said 18th of March; and further said, that she had been threatened by them to take it. And further depones, That Jean Key's mother staid with her in the deponent's house; and that what is said concerning the conversation between Jean Key and her mother above, which he did not hear, was before she was called in to the Judges. And further says, that he was called upon to attend the Judges as aforesaid by Jean Key's mother, who is his wife's aunt, and who went home with Jean Key to his house some time that night, and had staid in his house some time before. And upon a further interrogatory, depones, That to his knowledge and remembrance, she never went abroad alone, except when she visited Mrs Shiells; and the persons who

went along with her on other occasions, were the deponent's wife and sister commonly: That there may have been other people who went along with her, the deponent cannot take upon him to say. And further depones, That the first time she opened herself, with regard to the circumstances of her treatment, was upon the receipt of the letter signed Robert Campbell, above referred to: As to the particular time when that was, he can say no nearer than that it was between 10 and 20 days after she came to his house. And further depones, That the declarations above deponed upon are these referred to in Robert Leith, the preceding witness's deposition, and marked by the said Robert Leith and the Lord Justice Clerk.

Annabell Mitchell, relict of John Fairly, portioner of Arnfinlay, depones, That on Saturday the 8th of December 1750, the deponent went to Edinbelly to make a visit to her niece, the deceased Mrs Wright, designed in the indictment Jean Key, daughter of James Key, portioner of Edinbelly, and who at that time had been a widow about six weeks, the husband, John Wright, having died so long before: That she came there about midday, and heard her mother and her talking that Robert Campbell, brother to the pannel, had sent a message, desiring to be permitted to make the said Jean Key a visit; which she would by no means admit of: That about eight o'clock that night, the pannel and his said brother Robert Campbell, and another brother named Ronald, and several other persons, came to the house, the doors being then

shut; and Thomas Key, who was uncle to the said Jean Key, being then without doors, they got hold of him; and the deponent, who was in the kitchen, heard them threaten, that if the door was not opened to them, they would get more men, and make keys of their own; and thereupon heard the said Thomas Key call to a servant within, who opened the door: That Jean Key and the deponent retired into a closet which they bolted on the inside; and the door of the house being opened, the pannel and his two brothers, and several other men with them came into the house, and the pannel called for Jean Key; and being told he could not see her, he swore by God, that he behoved to see her: That the deponent at the same time heard several other people on the outside of the house, speaking as she thought in the Irish language: That Jean Key, who seemed to be in great terror and fright, and was scarce able to speak, said they were come to endeavour to carry her off by force, and took her keys out of her pocket, and gave them to the deponent: That her mother having unlocked the closet door on the outside, and she having drawn the bolt on the inside, opened the door, and came out with the deponent: That the pannel then desired to speak with her alone in another room; but she said, that there was her mother and her uncle, who were all she had in place of her father, and she would go nowhere without them: That then all the four went to another room; but the deponent or any other of the family were not permitted to go with them, there being two of the pannel's party who were placed as sentinels, with

drawn swords, at the door of the house: That the deponent knew no more what passed in that room, till she heard Jean Key's shrieks and cries; and immediately after, saw a man carrying her in his arms from the said room out of the house: That upon seeing the deponent, she threw herself out of his arms, and got hold of the deponent, but that man soon drew her away from the deponent, and carried her out of the house: That the sentinels placed at the door, as said is, would not permit the deponent to follow her out of the house, and therefore she did not see what passed there; but heard one of them calling to another, if she would not ride, to throw her across the horse. Depones, That after Jean Key came out of the closet, she said to the pannel and his brother, that they were very uncivil, and did not behave like gentlemen, in proposing such questions to her so soon after her husband's death. Depones, That they carried the said Jean Key away from the house; and the deponent heard her cries and shrieks after she was away from the house. Depones, That the next day, being Sunday, there came a letter from one Leckie in Buchanan, to Jean Key's mother, acquainting her that Jean Key had been carried to his house; therefore the mother desired the deponent to go to Buchanan to see her niece, which the deponent accordingly did on Monday morning, and carried along with her James Ure, a tenant of Jean Key's, and Benjamin Downie, the deponent's son-in-law: That at Buchanan the pannel met them, and told the deponent, that her niece was carried forward to Ruindennan, where the depo-

nent, if she pleased, might go and see her. Depones, That she found her niece in great distress by sickness, and found that she had been vomiting the moment before the deponent came, which was after the night-fall. Depones, That upon seeing the deponent, she burst out into tears, and mourned, and spoke very little, and looked like a sick person. Depones, That the pannel and his two brothers before named, were there, and a great many more men, a whole room full; and they all supped together; but if Jean Key ate any, the deponent did not observe it. Depones, That after supper, and before going to bed, the deponent was allowed to converse with her alone; and because they had no conveniency within the house, therefore to go out of the house to the fields: That there again she mourned and lamented her misfortune, and that she had been oftner than once warned of her danger by her tenants and other neighbours, yet she had not been so happy as to make her escape: That the deponent asked her if she was desirous to go back to her mother? And she said she was; but thought it was impossible. Depones, That that night she told the deponent, they had married her, and bedded her before the deponent came: But the night was so bad, and Jean Key was so distressed, that they could not stay long without doors. Depones, That after they came into the house, there were two women who took off her cloaths, and put her again to bed, which women the deponent did not know. Depones, That the deponent in going to her bed, was obliged to pass by the said Jean

Key's bed, and then saw Robert Campbell, the pannel's brother, in naked bed with her: That next morning after Robert Campbell got up and was gone out of the room, the deponent came to her bedside, and had some conversation with her. Depones, That then she told the deponent, that when she was married, she was so bad, she could not stand alone; and that the pannel and two women held her up. Depones, That she also shewed the deponent a blue mark, or contusion on her arm, which she said she had got when they were putting her upon the horse; and that the blue mark, or contusion was from her shoulder downward below the elbow. Depones, That while the deponent was talking with her, she was ordered to make haste, and go to the boat that was to carry her up Lochlomond; and she was in such trouble and confusion on that account, that she could not tell the deponent any thing. And being interrogated if she was willing to go to the boat? depones, That she gave great sighs, wishing that she might see her mother; and the house being close by the shore, she was carried in a man's arms into the boat, which seemed to be to prevent her wetting her feet. Depones, That she did not hear upon the 8th of December, above mentioned, of any design that Jean Key had to go from home, or to pack up her clothes for that effect; nor did the deponent see any of them packed up. Depones, That at Ruindennan, she desired the deponent to send her riding clothes, and some of her linens along with a servant of Robert Campbell's that went with the deponent for that end

from Ruindennan; and accordingly, the deponent sent such clothes as she was directed, but found none of her clothes packed up. Depones, That Edinbelly lies in the parish of of Balfron.

John Risk, indweller in Clachan of Fintray, depones, That upon the Monday before the deceased Jean Key was carried off from her house of Edinbelly, in the parish of Balfron, and shire of Stirling, John M'Ewen, a messenger, and Robert Campbell, and another person with them, came to a public-house in the neighbourhood of Jean Key's: That the said John M'Ewen came to the house, and asked leave for some gentlemen to come there and see the family. What more he said, the deponent did not hear; but Jean Key answered, they should not come there, for she did not want to see any of them. That before John M'Ewen came to the house with the above message, the deponent had observed Robert Campbell, *alias* M'Gregor, go to the above mentioned ale house; upon which the deponent came into the house, and told Jean Key and the family, that he had seen the said Robert Campbell, *alias* M'Gregor, just in the neighbourhood of their house: That upon the Saturday night, immediately after the above mentioned Monday, about the end of the year 1750, a man, a stranger to the deponent, came to the door of the deceased Jean Key's house, and asked for quarters; the deponent told him he could not quarter there, but he would shew him a public house in the neighbourhood, which he accordingly did, and went along with him to it; and after staying there for some time, he return-

ed to Jean Key's, where he had not been long till Thomas Key, uncle to the said Jean, went out to see what sort of night it was: Immediately upon that, the deponent heard some noise without, upon which he ran and shut the door, apprehending that some of the people who had been there the Monday before, might be then returned in order to carry off Jean Key, having heard her express such apprehensions herself, having been alarmed with what some of her neighbours told her; and in order to prevent such attempts, she resolved to go to Glasgow the Monday following: That after the deponent had shut the door, as above, some people without pressed hard to get in; and one of them called to the deponent by name to open it, whom he took to be Thomas Key: That before the door was opened, some body withhout threatened to bring down Glengyle and his company, to force the house if they were not admitted. Upon this the door was opened, and the pannel, with his brother Robert, Thomas Key, with some other men to the deponent unknown, rushed into the house; when the pannel said he wanted to see the lady, meaning Jean Key, for she was not then in the room, having retired into a closet upon the noise at the door. The deponent does not recollect any thing else that passed, till Jean Key came into the room, which happened soon after, but does not know how she came out of the closet: That James, the pannel, upon her coming into the room, desired a word of her in the next room, but she refused to go, unless her uncle and her aunt went along with her; upon which she was asked, who was her uncle?

and she pointed out Thomas Key to them. Upon this the pannel, with his brother Robert, with Jean Key her mother, and Thomas her uncle, retired to another room with her aunt, the preceding witness: That the deponent was hindered to follow them by two armed men who came into the house with the pannel and his brother as above, and that several of the men who came into the house as above, were armed with swords and pistols; whether they were all provided so, he cannot tell, as they were covered with great-coats: That Jean Key had not been long in the other room, till they heard her shrieks and cries, and she was then immediately carried out of the house: That when the deponent and William Galbraith endeavoured to get to her, they were stopt and threatened by the two armed men who were left to guard them: That though the deponent did not actually see her carried out, yet he is sure such was the case by the noise of the struggle he heard through the passage through which they went, and by her cries, which he also could distinguish even after she was out: That he heard Jean Key's mother beg them to carry her alongst with her bairn; but they refused it; and told her she should be taken to her daughter some time after. And, so far as the deponent knows, the mother did not get out of the house till her daughter was gone; and till that time none of the family were suffered to go out, but were kept in by men at the door, who appeared to the deponent to have among them a durk, and something like a gun, or a staff as long as a gun, but as it was dark he could not distinguish: That

any language he heard spoke by the men without doors, when Jean Key was carried out, was Irish, which he does not understand: That after Jean Key was gone from the house, the deponent went out, and having gone westward, two men of the company, who carried her off, desired the deponent to return to the house, and bring Jean Key's cloak and cap, which he said he would willingly do, and even carry them to her himself. Upon this they turned their back and threatened to stick him if he offered to follow them. Depones, That the first time he saw Jean Key after this, was at Glasgow, where she lived after she left Edinburgh: That she complained much to the deponent then, and wished she had been dead rather than be so used, and that any favour that was shewn to her was by one Ronald. *Causa scientiæ patet.* And this is the truth as he shall answer to God.

William Galbraith, portioner of Edinbelly, depones, That he was in the deceased Jean Key's house of Edinbelly in the parish of Balfron, and shire of Stirling, on a Saturday's night in the month of December 1750 years: That some time after it was dark, he heard a confused noise of men's voices without the door, and who wanted to get into the house; threatening at the same time, if the door was not opened, that they would make doors of the windows, and so come in. And at last he distinguished the voice of Thomas Key, uncle to the deceased Jean Key, who called to John Risk, the preceding witness, as he thinks, to open the door, for that some men were there wanting to get in:

That the door being then opened, a number of men rushed into the house, among whom he knew the pannel, and his brother Ronald, but cannot be positive whether these men were all armed or not, as they were covered with great-coats; but under some of these coats he observed somewhat like the crampet of a sword. That when the said noise was first heard at the door, Jean Key, in a fright, retired into a closet with her aunt: That the pannel then desired to see Jean Key, and to have a word of her; for as he knew she was in the house, he was determined to come at her. Upon this, Jean Key's mother called softly towards the closet two or three times Jeany, Jeany, and then she came out; does not distinctly know whether at her mother's desire, or of her own accord: That when she came into the room, she told the pannel and his company, that they were very impudent and ill-bred to come to her upon such an errand of marriage, wanting but her money: She suspected their purpose, as the neighbours had told her, that they dreaded an attempt was to be made upon her by Robert Campbell: That the pannel answered, that though her husband had been dead but a few days, his brother Robert, who wanted a fortune, was come there to make a push for one. Upon this the pannel desired a word of Jean Key in another room. And after some talking to and again, she, with her mother, uncle, and aunt, retired to another room with the pannel, whither the deponent having followed them, the pannel would not suffer him to stay, saying he had no business there, though Jean Key desired he might stay, being a relation of hers.

Upon this, the deponent returned to the kitchen, where he staid with several of the pannel's company: That Jean Key had not been long in that room till he heard her shrieking and crying; and then those of the pannel's company who had remained in the kitchen, hurried away to the place where she was: That he heard a great noise through the passage that led out of the house; Jean Key's cries still continuing, and even he heard them after she was out, but he could not get to her, as he was confined to the kitchen by some of the pannel's company that were left there, who then produced swords and pistols; and after pointing the swords at the deponent's face, then they crossed them before the door, and a pistol was held over them: That during this interval, Jean Key's mother was crying and wringing her hands, and begged they would carry her along with her bairn; but some of the company told her, they would come and fetch her afterwards. Depones, That Jean Key was reckoned to be worth somewhat between 14,000 and 18,000 merks; and that he has heard, her father paid 9000 merks, or thereby, for what land he had: That he had heard the mother had £100 Scots yearly off her, and likewise was provided to some of the conquest. And further depones, That he believes Jean Key was about 20 years old at that time, but that she was not major.

Thomas Neilson, tenant in Edinbelly, in the parish of Balfron, and shire of Stirling, Depones, That the Monday before Jean Key was carried off from her house at Edinbelly, Robert Campbell,

whom the deponent heard was brother to the pannel, and one John M'Ewen, messenger, came to the deponent's house, which is a change-house; and after they had drank some ale and whisky, John M'Ewen carried the deponent alongst with him to Jean Key's house; and being come there, John M'Ewan desired the deponent to go in and ask of Jean Key, whether she would allow John M'Ewan to come and wait on her; and her answer was, that John M'Ewan was very welcome to come and wait on her, or pay her a visit, but she wanted no company with him: That before she delivered her answer as above, she asked of the deponent if there was any company with John M'Ewen? And the deponent told her there was a highland gentleman at his house, but he could not tell who it was: That the deponent having returned to John M'Ewan the answer of his message, the deponent went home; and John M'Ewan went into Jean Key's house; and after having remained there for a little, he returned to Robert Campbell, who was still in the deponent's house, and they two having gone out and talked together, to a dyke side, they again returned to the deponent's house, paid the reckoning, and went off: That upon Saturday, the 8th of December 1750, some people came to the deponent's house about eight o'clock at night, particularly one Duncan Graham in Gartmore, and another man whom he does not know, came to the deponent's house, and desired that he might go along with them, to shew them the way to the water of Endrick: That he went alongst with them, but upon recollection, there were three people that came to the deponent's

house, and the pannel was one of them; and as they were going all together to the water of Endrick, the pannel desired the deponent three times to call at Jean Key's house, which he refused to do twice, and the third time when the pannel desired him, he swore the deponent would do it if there was breath in his body; but after some discourse, he heard the voice of Thomas Key, who had been catched by some party who had been about Jean Key's house; and upon hearing his voice, the pannel let go the hold which he had of the deponent, and they got into the house, and pushed the deponent into the house amongst them: That when they came in, the pannel said that he had a word to speak to Jean Key, and would use her discreetly; but Jean Key could not be found. However, at last the mother produced her, and brought her into the room, where they were all together; and then the pannel said, that he wanted to speak a private word to her and her mother in the next room. Upon which the deponent lighted a candle, and shewed them to another room, the mother, the daughter, uncle, and aunt, and the pannel, with two other men: That when he had done, the pannel ordered the deponent out of the room, as he had nothing to do there; and he accordingly went to the kitchen, where having remained for about three minutes, he heard Jean Key give a cry, which the deponent understood to be the effect of their carrying her out of the house by force; and the deponent heard her cry for a considerable time after she was out of the house.

John M'Ewan, messenger at Cardross, depones, That upon Sunday, the 2d December 1750, Robert Campbell, the pannel's brother, came to the deponent's house and staid all night; and upon Monday morning he desired the deponent to go along with him to a neighbouring gentleman's house, to do some business with him: That after their business was over, he desired the deponent to go a little farther forward with him; and as they were travelling together upon the road, Robert Campbell told the deponent, that he wanted to make his addresses to Jean Key, and he wanted that the deponent should go and deliver his proposals to her and her mother. The deponent told Robert Campbell that he was afraid it would not do; but being prevailed upon, they went on till they came to Thomas Neilson's, the preceding witness's house; and after having been there for a little time, the deponent carried Thomas Neilson alongst with them, and desired him to go and tell Jean Key and her mother, that he was coming to pay them a visit: That Thomas Neilson having returned for answer, that he would be welcome, the deponent went in and saw Jean Key's mother, and having called for her daughter, she came into the room where they were sitting; and then he told that there was one Mr Campbell who wanted to make his compliments to her daughter; by which the deponent understood, that he wanted to make acquaintance with her: That upon this, it was asked by both, whether that Mr Campbell was married or not? The deponent told he was a widower; and they both upon this said, that there was none that want-

ed a wife would be welcome there for some time, and desired the deponent to tell Mr Campbell, and all others whom he had an opportunity of seeing, and had such a design, the above answer. Depones, That some time after the marriage of Jean Key with Robert Campbell, Robert Campbell came to the deponent's house, and staid a night; and either at that time, or the time above mentioned, Robert Campbell told the deponent, that he had once seen Jean Key at the seceding meeting-house at Edinbelly before the time he carried her off: And depones, That in October last, as the deponent thinks, the pannel, with his brother Robert came to his house; and there came likewise Thomas Key, uncle to the deceased Jean Key, and Mr Forrester of Polder; and Thomas Key wrote a letter, disclaiming all concern that he had in any prosecution against the pannel and his brother; but to whom he directed the letter he does not remember: That when this letter was obtained, there was nothing material passed betwixt the deponent and Thomas Key in relation to the said letter, nor did Thomas Key ever tell the deponent, that he granted the said letter from any fear he was in from the pannel and his friends.

Thomas Neilson, son to Thomas Neilson tenant in Edinbelly, depones, That upon Monday immediately preceding the Saturday in December 1750 years, upon which last day he heard Jean Key was carried away from her house, he saw Mr M'Ewan the preceding witness, and Robert Campbell, the pannel's brother, at the house of Thomas Neilson, also a preceding witness, the deponent's father:

That they, after staying about two hours together parted, took their horses about sunset, and he conveyed Robert Campbell part of the way northward into the muir, the length of his father's head dyke, which is about half a mile of way, and there pointed to him the way to Bucklyvie: That he remembers of no conversation they had by the way, further than that Robert Campbell asked him who was proprietor of the land they were going through, and how far Kilcroicks lands run, and he told him to the burn: He then asked whose was the land on the other side of it, and the deponent answered it was Jean Key's. Depones, That he was at home on the Saturday aforesaid, and three men having come into his father's house, and carried him along with them, the deponent inclined to stop out to see what was become of him, but he was stopt at the door by two men, one of them armed with a gun, and one of them desired he might stay within, and threatened to use violence against him if he would come out: That some time after this the deponent and his sister having got out, these two men stood close by them, and when they were abroad, he heard Jean Key's cries and knew her voice, his father's house not being over ten yards distance from hers, and he believes about that time they were carrying her off.

John Leckie, maltman at Buchanan Kirk, depones, That upon a Saturday in the month of December last was a year, the deceased Jean Key was brought to the deponent's house in Buchanan about 11 o'clock at night, and there came along with her,

James Drummond the pannel, and Robert and Ronald his brothers, with about seven other men, some of them armed with swords, dirks and pistols; that particularly the said Robert was armed with a dirk, and the pannel had a sword and pistol: That the said Jean Key, when she came had no shoes upon her feet, and nothing upon her head but her common head dress, nor had she any cloak or cap upon her; and the deponent believes she had rode from Edinbelly to his house in this condition, which is about eight miles: That though he was acquainted with the said Jean Key a little, he knew her not when she first came in, when she moaned and groaned a little, and appeared to the deponent to be out of order and sickish: And he having asked her how she came there, she answered that the M'Gregors had carried her away from her own house; adding that it had been well for her if she had not had a groat in the world, or words to that purpose; and from what he then observed, it was then his opinion she had been carried away forcibly and not of her own accord, upon which he forbore asking any more questions: His house, which is a public house, is in the mouth of the Highlands, and he did not care to offend strangers, and that he looked upon the M'Gregors as such, and he did not care to offend them: That the said Robert told him he had, or James told him, he had taken away the said Jean Key to marry her to the said Robert, and that they were to provide a minister for that purpose: That the pannel and others above mentioned staid in his house about two hours, during which time it ap-

peared to the deponent that the said Jean Key was melancholy; that she ate and drank some in his house, after which she appeared to be better than she was at first: That his wife lent Jean Key a cloak, and the pannel brought a pair of shoes from his wife for the said Jean: That they went away, taking the road towards Ruindennan upon Lochlomondside; but he does not know whither they went; for though he asked, they refused to tell him: That some of the men present said, she had left her shoes by the way, but she herself said nothing to that. And further depones, that his house is five long miles from Ruindennan.

JANET MITCHEL, relict of the deceased James Key, portioner of Edinbelly, depones, That Mr Wright, her deceased daughter's husband, died in the month of October 1750, at his own house of Edinbelly: That her said daughter was then of the age of 18. Depones, That she computes her daughter's estate to be in value, lands and money, about 20,000 merks. Depones, That her daughter continued to reside at Edinbelly, till she was carried from thence: That she does not remember, that during the time of her residence there, she went abroad to pay any visits in the neighbourhood, save once that she went to her uncle's at Glins, which is about two miles distance from Edinbelly. Depones, That upon the Monday before her daughter was carried off, John M'Ewan, messenger, came to the house of Edinbelly, where she and her daughter were living; and her daughter being at that time above stairs, Mr M'Ewan

said to the deponent, that he had a message from a gentleman of the name of Campbell, to know whether his visit would be acceptable in the family; upon which the deponent asked him, with a sort of laugh, did he want a wife; upon which he answered, that the gentleman was a widower, and gave her to understand, that his errand really was to propose marriage to her daughter; to which she answered, that be the gentleman who he will, it was a very unbecoming proposal, as her son-in-law had so lately died; and her daughter, who was then also present, the deponent having called her down stairs, before she knew what M'Ewan's message was, said, with tears in her eyes, that it was a very uncivil proposal: That after this, M'Ewan went away, and soon returned with a second message from the gentleman, begging he might be allowed to come into the house but to see her; to which her daughter answered, that be who he will, he would not see her. Depones, That she has no reason or cause to believe, that her daughter had ever seen Robert M'Gregor, brother to the pannel, before the time she was carried off, or that she had any correspondence with him by messages, other than what has just been related: That she never saw him at the house of Edinbelly before the night on which he came to carry off her daughter; and that she hardly thinks she would know him, were he standing here just now. Depones, That upon Saturday after the aforesaid message of Monday, which was in winter was a year, about the shortest day, the pannel, with his brother Robert, and several others with them, came and carried off

her daughter. Depones, That Thomas Key, her brother-in-law, having gone out of the door to see what sort of a night it was, the pannel, upon his returning to the house, came in with him, and at the same time several others rushed in: That she knew none of them except the pannel, who said to her, Mrs Key, be not afraid, we are not come to rob your house: That she heard him say also, that though his brother Robert could not get access upon his own message, he would get access now, or words to that purpose: That the deponent then was in such confusion that she could not speak, and so said nothing to them: That as there had been a clatter in the country before, that the M'Gregors were to come and carry off her daughter; she, her said daughter, upon hearing the noise of the people at the door, went into a closet to conceal herself, and that her aunt, a former deponent, went along with her: That the pannel still insisting that he would see and speak with her, and threatening to break up every door in the house, the deponent went to the door of the closet and called to her, "Jeany, come out;" which she at last did, after deponent had called to her several times, and accordingly she came out; and her uncle being standing at the kitchen fire, she ran to him and took hold of him; upon which the pannel proposing to her to speak to him in another room, she answered, that she would not go with him to any other room without her uncle, as he was all she had now in place of her father; whereupon her uncle went with her into another room: That the deponent followed, with William Galbraith and the depon-

ent's sister, and some of the pannel's accomplices, she supposed, being strangers to her: That what passed then among them in that room she cannot say, being in such confusion: That she remembers nothing of it, other than this. that she heard the pannel say, that he had a brother who wanted a fortune; and that she heard her daughter say, 'You are not wanting me, but my money; and you shall never be a groat the better of it: That she saw, after this, the pannel taking hold of her daughter by the arm, whereupon she took hold of her uncle, who was standing close by; whereupon something was said by James in the highland language, which she did not understand; and at the first one, and afterwards more of the pannel's company laid hold of her, and carried her out between them like a child held up: That the deponent did not follow her out, being hindered from so doing by men at the door with swords and pistols: That when she was out, she heard her daughter give some dreadful cries; and heard some one or other say, If she will not sit, tie her. Depones, That when the pannel was in quest of her daughter in the house, he said it was needless to pretend to resist him, for that Glengyle was in the muir with a hundred men ready at a call. Depones, That she is sure that at this time none of her daughter's clothes were packed up, having seen them lying in the house in their usual order, having had no purpose to go to Glasgow till towards the spring. And being interrogate for the pannel, depones, That when her daughter was carried away as aforesaid, the deponent proposed

they should take her also along with her, which they refused to do; saying, they were going to Glasgow, and would come back to-morrow for the deponent. Depones, That the first time she saw her daughter after she had been taken away, was in the Lord Justice Clerk's house; when she was in such a condition that the deponent hardly knew her, and which she cannot in words describe. Depones, That she appeared to have lost a part of her judgment, and did not recover it till after she had been some time in Mr Wightman's house, but cannot set the precise time; and never recovered her health fully during her life: That she eat but little, and drank rather too much of water, small beer, and tea. And being further interrogate for the pursuer, depones, That when she first saw her daughter at the Lord Justice Clerk's house, and hardly knew her, as has been said; Mr Baird said, Mrs Key, don't you know your daughter? she asked where she was; and he having pointed her out, the deponent then looking about, said, Jeany, are you there? to which she answered, Aye; and that there was no particular conversation passed between them. And being further interrogate, depones, That after her daughter left Mr Wightman's house, and went to reside at Glasgow, she would not again go and live in the country, for fear that she should fall into the hands of those people that had ruined her; and that it is 12 or 14 miles between Glasgow and Edinbelly. And being further interrogate, depones, That she found several people, while she was detained in the Highlands, pretending to be her friends, whom

she discovered not to be so, for that they again told the M'Gregors every thing she had said; and told the deponent, that for that reason she even suspected Mr Campbell, the Sheriff-Substitute, and therefore chose rather to follow the advice which others had given her, to say every thing as they said, but to commit nothing to writing, to the end that she might be taken to Edinburgh, to apply for getting off the sequestration of her effects. And being interrogate for the pannel, depones, That her daughter died of the small-pox. And being further interrogate for the pursuer, depones, That her daughter has told her, both when she was living at Mr Wightman's, and while at Glasgow, that while she was in the Highlands they had framed a letter, which they obliged her to sign, importing, that she had a previous correspondence with the M'Gregors before the time that they had carried her off.

Giles Buchanan, spouse to John Leckie, maltman at Buchanan Kirk, depones, That some time about the middle of winter was a year, the pannel, with his two brothers, Ronald and Robert, came to her house, with several other persons with them, after the family was asleep in bed; as they usually go to bed about 10 o'clock: That her husband and she arose from bed: That she saw no arms about any of the men: That the deceased Mrs Wright was brought along with them: That her dress was such as she appeared to have gone in at home. and not of a person intending a journey: That she was some time in the house before

the deponent saw her; and when she did see her, she observed no symptom of distress or sickness about her. Depones, That the said Mrs Wright had no shoes upon her feet when she came; and the deponent having asked her the reason of it, she said they had fallen off her, and further added, that she had a bundle of things tied up, and in it a new riding-habit, which, since they had brought herself, she wished they had brought it also. And interrogate, Whether she heard any expression drop from the said Mrs Wright, from which she could conclude whether she came voluntarily, or was brought against her will? Depones, That she heard her say she was carried off; but how that came about she does not know. Depones, That the said Mrs Wright got a pair of shoes at the deponent's house: That they were paid for; but who paid for them she does not know. And being interrogate for the pannel, depones, That while the said Mrs Wright continued at the deponent's house, which was about an hour and a half, her conversation was discreet, without any confusion, which the deponent could observe; and that she eat and drank with the company; and that she did not hear her complain of any hurt. And further depones, That she lent the said Mrs Wright a cloak, a skirt, and a cap.

Thomas Key, tenant in Balquhan, depones, That Jean Key, his niece, died in the month of October last, and was born in the month of October 1732. That Mr Wright, her husband,
in the parish of Balfron, and shire

the middle of October 1750: That the deponent was at Edinbelly upon Saturday the 8th of December thereafter: That the occasion of his being there then, was a message sent him by the Lady Glins, to let him know that she had been informed that Robert Campbell, the pannel's brother, as he understood from the message, had, upon the Monday or Tuesday, been at Edinbelly to see his niece, and make a visit to her, and that he had left it in an angry mood, as she had been informed, and had said, that he would come back again in another manner; and therefore desired the deponent to go and acquaint his niece of what was threatened, that she might turn out of the way; and further added, that if he the deponent would not go, she would take the horse, and go herself: That the deponent upon this message, after he had dispatched some affairs he had to do at home, walked to Edinbelly that night, but it was dark before he came there, where he found Annabel Mitchell, a former witness, in discourse with Mrs Key, and which prevented his delivering the message immediately, which he had received from the Lady Glins: however, the discourse happened to fall in betwixt Mrs Key and the said Annabel concerning the M'Gregors upon this occasion, that one in the garb of a highlandman had called, and come into the kitchen for quarters, and was very unwilling to go away again; however, he was told that nobody quartered in that house, but that there was a public-house hard by; and at last he was prevailed upon to go away, and a servant was sent with him to shew him the way. After he was gone, one of the women mentioned, namely Jean

Key, said that a highlandman had been there in the morning, under pretence of craving money as the price of wood purchased by her deceased husband, though she knew there was nothing due by him on that account, for he had purchased no wood from them; and further added, that she could not imagine the M'Gregors would attempt any thing lawless at that time, being now subdued by the laws; to which the deponent replied, He did not know what they might do: That the deponent had said to his niece, he intended to leave her for that night, and lodge with his nephew, Mr Galbraith, and that he would come to the church next day, and hear sermon; but she told him she had some particulars of her affairs to advise with him, and therefore pressed him to stay all night; and if he would not comply with that request, desired he might return and stay Sunday's night with her, and do what was necessary for her affairs with her upon Monday morning: That the deponent then said he would go out and see what sort of a night it was, and that he intended in that way to have got Jean Key to the door, in order to communicate the message to her; but when he came to the door and had got out, and Jean Key was just at his back, the deponent spied a company of men upon a rising ground, he thinks to the number of six, and when he saw them making towards the house from the east, he endeavoured to turn off by the west end of the house, and run himself by the side of a peat stack into a man's arms, who was standing in a dark place, which surprised the deponent, knowing nothing of his being there: That he had a big-coat upon him,

which when he opened, there was a great clattering of iron things;—the deponent suspected it was arms, but he did not see any thing, the night being very dark: That this man turned him in towards the house, and by that time he was surrounded by the company he has before mentioned, which had come upon them from hearing the noise that was made by the deponent and this man that was standing in the dark corner: That they carried him straight to the door of the house, and threatened him to call upon some name in the house of a person he was acquainted with, to open the door; and the deponent so far complied with them, that he cried out upon John Risk, servant in the house, and told him there was men there wanted they should open the door: That the deponent's intention of speaking so loud, was to let the people of the house know, that it was not his desire they should open the door; and indeed these men reproved him for making such a noise, and ordered him not to speak any more, for that they would make doors to themselves. However the door was opened, the deponent did not know how, but the deponent was the first that was pushed in, and others rushed in after him: That before they entered the house, and got into light, he knew none of them, the night being extremely dark; but after they had got into the kitchen, he knew the pannel, but none of the rest that got in. Depones, That he, the pannel, called for a word of Mrs Wright, and swore he would have her, as he knew she was in the house. Depones, That he came to understand afterwards, that at this time she was locked in a closet, whereof her

mother had the key: That the pannel James went up and down the house scattering threats, that he would turn every thing upside down in the house, and make doors for himself, unless Jean Key was brought to him: That the mother was frightened, and came to the deponent, and asked him what she could do; and the truth was, the deponent was frightened himself, and said, that the house was her own, and she might do with it as she thought fit. Depones, That after this she went and opened the closet door, and Jean Key came out, which was the first time the deponent knew she was there. At this time the deponent was standing with the pannel at the kitchen fire: That these men that came along with him, and other people that came in to the family, were standing between the deponent and the said Jean Key, so that he does not know what past upon her first appearance, but at last she came through to the deponent's side, and then he heard her say, that these people wanted her money, and not herself, and that they were very uncivil that had come to her house in that manner, so soon after her husband's death. At last the pannel took hold of Jean Key's hand, at least stretched out his hand to take a grip of her, and told her he wanted to speak with her in a room by herself: That she avoided letting him take her by the hand, and told him, she would go nowhere, without her mother and her uncle would go along with her; and this was agreed to; and the mother, Jean Key, the deponent, the pannel, and other three men of his company, were carried into another room; and before they entered, the deponent saw men with drawn swords

at the outer door That when they went together into that other room, the deponent saw the pannel seat himself in an elbow-chair for a moment, and then starting up to his feet, pointed to one of the three men above mentioned, who belonged to his company, and said, Here is Rob, my brother, a young fellow that wants to push his fortune, who some few days ago came to make his addresses to Mrs Wright and was refused access, but now he would make it effectual; and further added, that Glengyle and a hundred men was hard by in the muir, whom he would call if there was any resistance made: That the deponent then said, ten men would subdue all that was there; but he hoped that they would allow Mrs Wright some time to give them an answer in modesty; but this they would not agree to; and the pannel then spoke in the Irish language, the deponent does not know what it was, but immediately after the three men, mentioned to have been in the room, laid hold of her, and carried her off; putting her head over a man's shoulder, and her feet as high at least as her head: That they carried her off when she was shrieking and crying like a woman in labour: That the deponent heard little more after she was carried out of the door, but only some of her cries while she was within reach of hearing without the house. Depones, That he went towards the door to look after her; but the first time he attempted it, he was met by swords pointed towards his breast; and when he made the second attempt, he observed two men standing, one on one side of the door, and the other on the other side, crossing their swords to stop the door,

and held a pistol upon the middle of the cross, and the deponent thought he had gone far enough, and so returned: That the pannel remained some time after the rest had carried off Jean Key, and the deponent had some discourse with him; and at that time said to him, that since they had taken away the daughter, they might take away the mother also. Depones, That upon the 18th of May 1751, or thereabouts, he called to see Jean Key, who then lodged with Mr Wightman of Maulsley, in the Potterrow: That there were two sentinels placed upon the door: That the deponent prevailed upon Jean Key to go out and take a walk with him: That the sentinels challanged them when they went out, but Jean Key told them she was then going with her uncle: That the deponent and she went to the meadow; they had a great deal of discourse concerning the usage she had met with while she remained under the power of those who had carried her off, and particularly says, that she told him concerning her marriage: That she was led or brought into a house, and held by the waist by the pannel until a man pronounced some words without any questions asked at her, or consent given, which they called a marriage. Depones, That she also said there were two women who pulled off her clothes, and they and the pannel pushed her into the bed, and put in Robert to her. And farther adds, That when he was tutor to his niece in the year 1744 and 1745, her yearly income in land and money amounted to about betwixt 600 and 700 merks; believes that he thinks it might

have been better about the time she was carried off, but knows not how much.

THOMAS BLAIR, brewer in Gartmore, depones, That upon the 8th of December 1750, Ronald M'Gregor, the pannel's brother, came to the deponent's house and desired him to come to Chapel Aroch to speak to the pannel James, who had some business with him at Chapel Aroch: That he accordingly went and found the pannel and his brother there: That Robert told him it was he that had sent for him and not the pannel, and that he had an appointment that night with a young woman who lived upon the Water of Enrick, to marry her, and desired the deponent to go along, as he knew the road best, the night being dark, and told him the lady's name was Jean Key, at Edinbelly. And this he the said Robert did in presence of the pannel: That accordingly he went along with the said James, Robert, and Ronald, and seven persons more, who alighted from their horses, about a furlong or two from the said Jean Key's house, and he and Duncan M'Allan were ordered to keep the horses and to be at a call with them: That accordingly they were called; and by the time he came to the said Jean Key's house with them, she had been brought out of it, and she was put before the said Robert upon his horse, and was carried off, and by what he could judge of her words and behaviour, and her crying, Oh! her mother, her mother, he thought she was carried away by force, and contrary to her will and inclination: That he heard her ask who it was

that was carrying her off, and Robert answered it was Robert Campbell; and she replied she was sorry he had changed his name so soon. Robert said he was sorry for that too, but she need not be concerned for he would make her happy. But she said that without her mother she never could be happy; and Robert said she need not be uneasy, for in a short space he would send for her: That when the said Jean was carried off, she was set straight upon the horse, sitting before Robert, and rode so far a little space, till Duncan Graham, one of the party's horse bogged; and while he was employed taking the horse out of the bog, the said Jean had got upon the horse behind Robert; but what passed between them while he was thus employed he knows not: That he observed that the pannel and the said Robert had each of them a sword; and that he, after going along with them and the rest of the party about a couple of furlongs, left them and went home.

Duncan Graham, brewer in Gartmore, depones, That upon Saturday the 8th of December 1750, he went along with the pannel and his brother Robert, to the house of Thomas Neilson, brewer at Edinbelly, a preceding witness, and there were to the number of about ten in company: That the pannel and the deponent only entered the said Thomas's house to prevent disturbance, and the pannel carried the said Thomas along with him to get into the house of Jean Key, to help the pannel to converse with her: That he went a little after and saw Robert Campbell, having the said Jean Key in his

arms at the door of the house, when she was crying out, My dear mother. And being interrogated if by what he observed and saw in the house, he thought the said Jean was carried out of it by force, or agreeable to her own inclination? Depones, That he thought she was carried out of it against the inclination of her friends:—But the deponent being left to guard the house, by standing at the kitchen door to prevent any of the family's following the party, one of which the pannel was, he followed them after they were a little gone, and just as he came up to them bogged his horse; and all the company having got down from horseback to help to pull him out, when that was done, the said Jean got on horseback behind the said Robert, and appeared to the deponent so mild and peaceable, that he judged she was brought out of her own house according to her own inclination: That she had on then a great coat which he believed was a man's: That he went along with the party attending her to the house of John Leckie, at Buchanan's. And being interrogate, depones, That when he was standing at the kitchen door for the purpose above mentioned, along with Thomas Wilson, a preceding witness, the outer door was open, and he did not hear the said Jean Key, after she was carried out by Robert Campbell in manner foresaid, make any complaint or outcry. Depones, That after an hour's stay there, he went to Glasgow with two letters which he received from the pannel, who told him they were intended to bring a minister out of it to marry his brother Robert and Jean Key. And

Graham, a stabler at the West Port of Glasgow, to whom one of the letters was addressed, having found the minister, the deponent desired Graham to acquaint him, to go on the road towards the New Kirk of Kirlpatrick, and that he, the deponent would follow him, which was accordingly done; and the deponent was told by Graham, by way of direction, that the minister was riding upon a brown horse; and the deponent overtook the minister betwixt Partick and the said New Kirk, and went along with him to Ruindennan, and they arrived there Monday the 10th about breakfast time, and went to the house of Alexander M'Gregor, who calls himself Graham; and after staying there a good while, the said minister set about celebrating a marriage betwixt the said Robert and Jean: That the deponent was at the door of the room, in which there was a good deal of company between him and the couple, so he did not see Jean, nor did he hear her utter any words importing her consent, nor did he hear any other words, or the minister ask her consent.

Agnes M'Alpine, spouse to Alexander M'Coll, late at Ruindennan, depones, That upon Sunday the 9th of December, in the year 1750, Jean Key, with the pannel, and his brother Robert, and some other company along with them, came to the deponent's house at Ruindennan: That she passed all that day there, and walked out to the fields with Miss M'Alpine, Blairvockie's daughter, and his wife, being then at absolute liberty: That the said Jean Key did not appear to the deponent to be at all

discomposed or out of humour: That at night the deponent prepared a bed for her, but she refused to go to it, and only flung herself down upon it for some time with all her clothes on: That about eight o'clock next morning she saw Robert Campbell and the said Jean Key married together:—That Jean stood up before the person who celebrated the marriage without being supported or touched by any body: That when the person asked the consent of the couple before him, Robert Campbell gave his audibly, and Jean Key dropt a courtsey and bowed at every question: That soon after the celebration of the marriage, and when they had got some refreshment, the deponent, with Blairvockie's lady and daughter retired into a room with Jean Key, where the said Jean Key having taken off her own clothes without any assistance from those present, was put to bed: That the deponent, with the above mentioned two ladies took Jean Key's clothes from her as she threw them off, and laid them by: That a message was then sent to Robert Campbell, who thereupon came into the room, and went to bed to the said Jean Key, upon which the company left them, and some time that afternoon Robert Campbell and Jean Key got up again.

Gilbert M'Alpine of Blairvockie, depones, That early on Sunday morning, being the 9th of December in the year 1750, the pannel came to the deponent's house, which is at about a mile's distance from Ruindennan: That the pannel found the deponent in bed: That he asked at the pannel

what brought him there so early, who told him it was to get his company alongst with him down to Ruindennan, where his brother Robert with some of his friends, had brought a woman to whom he was to be married: The deponent thereupon asked him if the said woman came there willingly, and added, that if she was brought by force, he, the deponent, would not go along with him, and at the same time advised the pannel, that if that was the case to have nothing to do in the matter: That the pannel thereupon assured him that she had come willingly, and that many meetings had been betwixt his brother Robert and her, and also that several letters had passed between them before that time; whereupon the deponent told him he would then go down to Ruindennan, but not at that early hour: That the pannel then assured him, that when he should get to Ruindennan he would plainly discover that the said woman came there as willingly as any woman could do: That the deponent then asked the pannel, if his brother Robert had the woman's friends' consent to the intended marriage? and was answered that he had not, and that was all he wanted: That the pannel then asked the deponent's leave to carry down his daughter to Ruindennan to be a companion to the said woman, as she had no proper company for her there: That the deponent having consented, his daughter went down accordingly, and he himself followed some time after: That he at the same time advised the pannel to send for the said woman, whom he called Jean Key; her mother at the same time adding, that though the mother had not consented, yet as

the daughter was now off, and things could not be helped, he did not doubt but she would come and be a witness to the marriage: That the pannel promised to do so; and accordingly sent a man and two horses for her: That when the deponent came to Ruindennan, which was betwixt 10 and 11 o'clock forenoon, he found the company there sitting round the table, Jean Key at the head of it, with Robert Campbell upon one hand of her, and the deponent's wife on the other: That the deponent's wife went into the room along with him; and that it was his daughter, and not his wife, who sat on the one hand of Jean Key: That upon the deponent's coming into the room, Robert Campbell said to Jean Key, that is Blairvockie; upon which she rose, and he went up to her and gave her a kiss: That after this the company having sitten about an hour about the table all in good humour, Jean Key appearing fatigued leaned her head upon Robert Campbell's shoulder, and there fell asleep, whereupon the pannel observed to the deponent, that this was a sign Jean Key was very well pleased with his brother Robert; or if it had been otherwise, it would have been as easy for her to lay her head upon your wife's shoulder, who by that time had taken her place at Jean Key's hand; and the deponent indeed thought that it was a very good sign: That at night after it turned dark, Jean Key expressed some surprise that neither her mother nor the minister were yet come: That the deponent after this advised Jean Key to go to bed and take some rest; but she refused to do it, unless the deponent's wife and daughter went to the same bed with her: That accordingly

they all three went to bed together, and as the deponent believes, threw off their clothes: That next morning, when it was light, Robert Campbell with Jean Key, and a little after the pannel, and the deponent's daughter, and some others, came into the room where the deponent and his wife were: That the pannel told the deponent that the minister was now come, and desired him to get out of bed, as that was the only room in the house fit for the business they were going about; the deponent answered, that there was not time for that now; so the minister was immediately brought in, upon which the pannel went up to Jean Key, where she was sitting; and clapping her upon the shoulder, whispered somewhat in her ear, and then taking her by the hand led her up to his brother Robert, and placed them before the minister, who then did his business, but in so low a voice, that he did not hear the words he spoke, but observed Jean Key bow twice during the ceremony; which being over, the company kissed all round, and Jean Key came up to the bed with Robert Campbell, and both of them kissed the deponent and his wife who were sitting in the bed: That when the pannel placed Jean Key before the minister as above, she stood there during all the ceremony without any body touching her. Depones, That he did not hear Jean Key use any hard words to the minister, or call him names. Depones, That on Monday after the marriage he dined with Jean Key and the company, when she behaved as chearfully as ever he saw any woman do, and did not observe the mark of grief in her

eye all the while he was about the house: That he did not see them in bed the first time they went to it after the marriage; but on Monday's night he and some others of the company went into the room, Jean Key's aunt being with him, when he saw Robert Campbell and Jean Key in bed together, and drank a dram at the bedside: That next morning when Jean Key was going to take boat to go up the loch, the deponent advised her rather to stay that day at his house, telling her, that as it rained, and the wind was against them, she would probably be afraid, not being used with the water; but she answered she was not afraid to go any where with Robert Campbell and that company.

Mary M'Alpine, daughter to the immediate preceding witness, depones, That winter was a twelvemonth, the pannel came to the deponent's father's house one morning, and desired that her father, and her mother, and she, might come down to Ruindennan, and meet him with some company: That accordingly they all three went, but the deponent was the first that went to Sanders M'Coll's house in Ruindennan; and when she entered into the room where the pannel was, she saw there along with him Robert Campbell, his brother, and Jean Key, with some more company; That Robert Campbell and Jean Key were sitting by one another; and Jean Key had her hand about his neck, and he his hand on her breast: That Jean Key seemed to be in very good humour, and

no way displeased, but very merry: That she did not observe her to sleep any while she was at table; but after dinner, Jean Key turned a little drowsy; and upon that, she and the deponent retired to another room, where Jean Key, throwing herself upon a bed, took a nap: That she got up, and did not afterwards sleep any all the next night, but sat up; and the deponent and her mother sat up alongst with her, excepting for a little while in the morning: That she and her mother turning drowsy, went to her bed with the deponent's father. Depones, That before dinner, Jean Key and the deponent took a walk by themselves two; and while they were walking, Jean Key told the deponent, that the night before she was carried off from her own house, and wondered whether her mother would come to her that day; the deponent answered, that she did not know whether her mother would come or not, but that she believed she was sent for. And being interrogate, Whether Jean Key said she was carried off willingly or not? depones, That she did not know, as the deponent put no such question to her. Depones, That Jean Key was desired by the deponent's mother to go to her naked bed; but Jean Key refused, and would by no means do it; but for what reason the deponent does not know: That the minister came to the house the deponent was in at Ruindennan about day-break on Monday; and a message was brought to Jean Key that he was come: That at this time the deponent was sitting with Jean Key in the same room where her father and mother

were in bed; but her mother's clothes, she thinks, were not off: That some of the company came into the room with the minister, particularly the pannel, James Drummond, who said to Jean Key, Come, my dear, stand up, reaching his hand across the table, which was betwixt them, and touching Jean Key; upon which she immediately of herself got up, and stood beside Robert, before the minister; and the minister then married the said Robert and Jean Key together; and whenever, or so often as the said Jean Key should answer any question put to her by the minister, she made a low curtesy; but the deponent being at some little distance, did not hear a word of what the minister said. Depones, That a little after this, Jean Key, the deponent's mother, and herself, with the mistress of the house, went out to another room, where the deponent helped to take off some of Jean Key's clothes; but Jean Key took off the most part of them herself, and appeared to be very well content, and afterwards went to bed by herself; after this, Robert Campbell came in with some other company along with him, among whom were the pannel and the deponent's father; and Robert went to bed with Jean Key; and the company having drank the bride and bridegroom's health, Jean Key got up and sat in her bed, and drank the company's good health; and upon this the company retired out of the room: That the bedding, the deponent means, was a little after the marriage; and the deponent did not see them bedded at night.

Mary M'Illeaster, *alias* M'Gregor, spouse to Gilbert M'Alpine of Blairvockie, examined and interrogated by Alexander Carmichael, writer in Edinburgh, and John Campbell, late chamberlain of Argyle, who were both sworn faithfully to interpret the said Mary M'Illeaster her deposition in the Irish language, and report the same, with all others who could not speak in the English language, depones, That upon a Sunday, in the month of December 1750 years, she saw the pannel, and Robert his brother, whom she had been formerly acquainted with, and Jean Key, whom she had not seen before that time, at Ruindennan; and that she understood the said Robert and Jean were to be married: That the said Jean Key appeared to be cheerful: That she heard a clergyman had been sent for, who came about daybreak the Monday thereafter; and that he told her in the Irish language, that the said Robert and Jean Key were to be married: That Jean Key and the deponent's daughter were walking at some distance from Alexander M'Coll's house at Ruindennan; and upon the said Jean Key's receiving notice that the minister was come, she came into the house upon the Monday morning; and that her behaviour at that time, upon the minister's arrival, appeared to the deponent to be decent, and as it should be: That they retired to a large room in the house altogether, and there the deponent saw Robert Campbell and Jean Key married; she, the deponent, and her husband being then a-bed in the room: That when the minister asked the said Jean Key any questions during the ceremony of the marriage, she gave a

curtesy; and after the ceremony was over she returned thanks to the minister by a bow: That the marriage was celebrate in the English language, which she, the deponent, did not understand: That the marriage was celebrated in the morning, and thereafter they took a small refreshment, the minister and company having got a glass of wine, then she saw Jean Key go to bed, and which she appeared to do with as great willingness as any woman ever she saw: That she herself threw off her clothes, which the deponent and her daughter received from her as she threw them off, as is customary when brides are undressed in that country: That after the said Jean Key was in bed, she saw Robert Campbell, the pannel, and some other gentlemen, come into the room, and throw off his clothes, and go to bed to the said Jean Key: That her husband was not present when Robert Campbell was put to bed: That after they were bedded a glass was filled round, and all the company drank their health, and they in return drank the company's health; and then the deponent kissed them, and bade them farewell, as she believes the rest of the company did, and retired. Depones, That she was with Jean Key the Sunday's night: That the said Jean, about the usual time of going to bed, turned drowsy and fell asleep, leaning her head upon the said Robert Campbell, who at the same time had his hand upon her breast: That the deponent desired her several times to go to bed; and at last, as the deponent thinks, about mid-night she agreed to go to bed, and accordingly went with the deponent's daughter, the preceding witness; but

the said Jean Key did not throw off any thing to speak of of her clothes: That as the deponent could not speak English, nor Jean Key Irish, any conversation betwixt them was interpreted by her daughter the preceding witness.

Henry Home of Kames, Esq. one of the Senators of the College of Justice, depones, That a few days before the date of the second bill of suspension, the deponent was applied to by Mr Alexander Stuart, writer to the signet on behalf of Robert M'Gregor, *alias* Campbell, who was fugitate by the Court of Justiciary; and he was told by the said Mr Stuart, That Jean Key, Robert's wife, was come to town to solicit for him. The deponent having heard of the violent abduction, scrupled at all to engage in such an affair until he should know the woman's own sentiments and her present disposition: That then there was a meeting in the house of Mr David Græme, advocate, who was employed as a lawyer in the said affair: None present but the woman, Mr Græme, Mr Stuart, and the deponent. The conversation began upon the force and violence used in carrying her off, which she did not deny, though she endeavoured to alleviate, but as the principal point was the woman's present disposition which the deponent wanted to know, in order to determine himself whether he would engage or not; he put very particular and pointed questions to her upon that head, exhorting her withal in the strongest terms to speak her mind freely; and for her encouragement, promising her absolute protection and security. The result of the whole ques-

tions, was this answer: That however matters were carried on, she was now absolutely reconciled to her husband, loved him, and was thoroughly satisfied with her present condition. The deponent upon this having no doubt of her sincerity, agreed to serve her and Robert M'Gregor, *alias* Campbell, and accordingly the consultation went on; the particulars of which the deponent does not now remember, but thinks the result then was, That one bill of suspension should be offered to the Court of Session, to take off the sequestration of the woman's land estate, and some application to the Court of Justiciary to take off the fugitation. Depones, That the woman appeared sensible and sedate, and cheerful, and answered the questions put to her with propriety, so as to satisfy the deponent, as he has said above, that she was quite well pleased with her present condition. Depones, That though he was satisfied from common report, that there had been very unjustifiable violence used in carrying off the young woman from her own house, yet willing to hear what she had to say on that subject, he put a few questions to her; she wanted to excuse it as much as she could; but finding that she embarrassed herself, and could not make her story consistent, he dropt that subject and applied himself more particularly to enquire into her present condition and disposition of mind, as he has above deponed upon.

William Baird, maltman at Glasgow, depones, That he, along with Mr Graham, merchant in Glasgow, being possessed with a warrant to ap-

prehend the pannel and his brother, they met with young Glengyle and acquainted him thereof, and that they wanted to have some conversation with the pannel and his brothers upon the subject of the said Jean Key's being carried away from her own house by them, and suggested to Glengyle, that he intended to propose to them, that Jean Key should have leave to go to Glasgow to see her friends, leaving it in her choice either to stay with them or to return to Robert Campbell her husband, as she should think fit: That Glengyle relished the proposal, and wrote a letter to the pannel, which he sent by his own servant to him; in consequence of which the pannel and his brothers met the deponent and Mr Graham, at Callander of Monteith next day, and Jean Key came along with the brothers. But he, before the said letter was dispatched, gave his parole of honour to Glengyle, that none of the said brothers should be taken up for 48 hours from that time: That at this meeting which was in Donald MacNab's, there were present, besides the brothers and Jean Key, the deponent, Mr Graham, Glengyle, Mr Fairfoull of Braindam, when the deponent renewed the foresaid proposal; adding that their agreeing to it would remove all objections, and they would get Jean Key and the rights of the estate, and if they refused it they might repent it; to which the pannel answered, that he was in a worse condition in the year 1745, when he was flying before the king's army, carried in a litter; but since, that the strength of his own country and friends protected, and would protect him; adding, that he did not believe Jean Key would go to Glasgow and

leave her husband: That he himself was satisfied she should go, and would advise her to do so, and her husband to be kind to her that night, and persuade her to go: But next morning the pannel told him, that she said she would not go to Glasgow: That the deponent having seen the said Jean Key next morning in the room with the two brothers before breakfast, some debate arose between the deponent and the pannel, who asserted that she would not go to Glasgow; he, on the other hand said, that as she had always been a dutiful child, she would not be so cruel as not to go to see her afflicted mother: Upon which the pannel said, Do you impeach my honour? The deponent replied, That he never had heard of it: But they had a saying at Glasgow, That honesty was the best policy. The pannel replied, You may ask her then, and he accordingly did so; and her answer was with a sigh; I desire that earnestly, or above all things, or words to that purpose: That after this, she made a little pause, and the deponent observed the pannel give her a look in the face: Then she said she would be satisfied if the three brothers could obtain a protection there; upon which the deponent turning to the pannel said, your honour goes for very little with me; Why, what has she said? said he; the deponent answered, That she would go to Glasgow to see her friends. The pannel said, Did she not say any more? did not she speak of a protection? Yes, she wanted to have you safe there, where they are. To which the pannel replied, that he wanted a protection. The deponent said, that he believed the effect of a protec-

tion to be, to be safe. The pannel then explained to him three sorts of protections; and concluded that the protection he wanted for himself and his brothers was, that they might with safety go and stay eight or ten days at Glasgow, and that his brother Robert might have his wife at bed-time regularly every night. To which he replied, that that was such a protection as he neither could nor would grant him: That he had no private conversation with Jean Key himself, but the said William Graham had, in a closet off the room, where the above conversation happened: That after they had staid a little time, Mr Fairfoul of Braindam knocked at the door, and interrupted them; and Jean Key came to the door, and desired of him a little more time, and the door was again shut; and within a few minutes the said Fairfoul again knocked at the door, upon which they both came out of the closet: That thereafter, though Robert did not decline Jean Key's going to Glasgow, the pannel refused it, unless he got the said protection: That after all this, the company parted; and the deponent was still in hopes, as Glengyle was soon thereafter going to Glasgow, that he would bring the said Jean Key along with him; but he found himself disappointed, for Glengyle alone overtook the deponent and William Graham upon the road. Depones, That he and the said William Graham passed the night at Callander, at Donald M'Nub's house, where the said conversation happened, at night and in the morning respectively: That in the night time, William Graham told the deponent that he heard the voice of one weeping

very sore in the next room, and asked him if he heard it; which, upon listening, he agreed he did: That they both agreed in thinking it was Jean Key; and in the morning, she appeared to him and Mr Graham as one that had been weeping and to be melancholy; and that after Jean Key came to Glasgow, being asked by him, she told him that it was she who was weeping in the next room as aforesaid, because the pannel had come into her chamber after she had gone to bed, and pressed her not to agree to go to Glasgow to see her friends. Depones, That he is married to Jean Key's cousin-german.

William Graham, merchant in Glasgow, depones, That upon the 5th of January 1751, he went along with William Baird, the former deponent, to the Highlands, where their purpose was to discover and find out the pannel and his brothers, and apprehend them, for which he understood there was a warrant, though he was master of no such warrant himself, nor had they any officer of the law along with them: That upon the 6th of January, they met with Glengyle younger, to whom they told that their errand was to try if the pannel and his brothers would allow the deceased Mrs Wright to come to Glasgow and see her friends, after which she should be at liberty either to stay with them, or to return, as she inclined; to which Glengyle replied, that the proposal was reasonable; and that if he saw them he would be very angry if they did not comply with it; and at the same time wrote a letter to them, the purport of which he understood to be to

come to the Burn of Ruskie, where the deponent and Baird then were, to have an interview with them; but as a condition of the writing of this letter, Glengyle obtained from Mr Baird his parole, that the warrant should not be put in execution for the space of 48 hours: That next night the pannel and his two brothers, and the said Mrs Wright, came to Donald M'Nab's house at Callander in Monteith, where Glengyle, William Baird, and the deponent then were, and to which house Braeindam came the morning following: That both on said night and morning there was a conversation between William Baird and the pannel, when Mr Baird told the pannel the deponent and he were come to see if they would allow Mrs Wright to come to Glasgow; giving this reason for it, that as she had now been four weeks away from her mother, it was but reasonable to allow her to go to see her mother, and that she might either stay or return as she pleased; adding, that the pannel and his brothers were in a dangerous situation; and that if they refused this reasonable desire, they had themselves to blame for the consequences: To which the pannel answered, What did he regard what Mrs Wright's friends could do, when they, the said pannel and his brothers, had withstood the King's forces in the 1745. Depones, That the pannel further said, he did not believe Mrs Wright would be willing to go to Glasgow, she was so fond of his brother, her husband: That Mr Baird answered, he believed she would be willing; to which the pannel replied, Did he impeach his honour? which led Mr Baird to say, he did not know what he meant by honour;—honesty was the

word they best understood at Glasgow; and for his own part he would not believe the apostle Paul, if he should tell him that a woman carried off in the way Mrs Wright had been, would not be willing to go Glasgow to see her mother and friends: That the pannel then said, You may ask herself; which accordingly Mr Baird did, by asking her, whether it would not be agreeable to her to go to Glasgow and see her mother? to which she answered cheerfully, or gladly, that nothing could be more agreeable to her; but after pausing a while, and appearing to the deponent to be in some sort of fright, she added, that she wished a protection could be got for the pannel and his two brothers: That what is said to have happened, as above, was upon the morning of the 8th of January 1751: That on the night preceding, Baird and he lying in the same bed, Mr Baird said he overheard a woman weeping and moaning sore; but at the time knew not who it was; but next morning had great reason to suspect that it had been Mrs Wright, as they saw her all begreeten; and that some time thereafter Mr Baird told the deponent, that she had told him so from her own mouth; and that she had then further told him, that the occasion of her then weeping was, that the pannel had since their being together pressed hard upon her not to give her consent. Depones, That upon the said Mrs Wright proposing a protection for the three brothers, some discourse followed between the pannel and Mr Baird touching the nature of the protection that would please them; which the pannel explained to be such and such only as should protect them

not only in their own country where they needed none, but at Glasgow for the space of eight days, where his brother, her husband, should have liberty every night to go to bed with her at regular hours; upon which Mr Baird took the deponent into a closet to advise what was proper to be done on this occasion; to which the deponent answered that he might do what he had a mind, but for his part he could assent to no such capitulation.—Whereupon Mr Baird came out and told the pannel that he could not comply with his proposal. Depones, That soon after this, Baird and the deponent came away; but before coming away, Mrs Wright took the deponent into the before mentioned closet, when, understanding she was not to be allowed to go to Glasgow, she lamented her fate exceedingly, and said to the deponent that the sending of parties was unnecessary, for they had always intelligence before they came. Depones, That while he was in the closet with Mrs Wright as aforesaid, they were frequently interrupted by Mr Fairfoul of Brendam, which he oftener than once repeated by tirling at the door, by which she was interrupted from saying somewhat to the deponent which she appeared to him to have intended: That the deponent also by this time became in some fright lest offence should be taken against him, and so left the closet. Depones, That before coming away, the deponent had also an interview with the pannel in the same closet, where the pannel proposed to him to use his interest with Mrs Wright's mother to withdraw the warrants that were out for apprehending them, otherwise, said he,

the young folks will go over to France or Holland, which of them he does not remember, and that their clothes were buckled up for that effect, and that they were this far upon their way. Depones, That he had frequent occasions of seeing Mrs Wright after she came to reside at Glasgow, and that he does not remember of any particulars she told him of the usage she had met with while in the Highlands; but this he remembers, that she expressed great satisfaction in general at her being relieved from the hands of these people, and told him of some man at Killin who had formed a project for her escape, though it misgave: That she told the deponent the man was in some public office, and he thinks she called his name Mr Campbell; but it was not Campbell of Torry.

Mary Russel, relict of Robert Inglis, writer in Edinburgh, depones, That the deceased Jean Key came to the deponent's house the 18th of March 1751, and remained there till the 6th of June thereafter: That when she came first there, the deponent observed her in some disorder, not only with respect to her health, but also with respect to her judgment: That she appeared to be confused, and the deponent observed her frequently, even in company, speaking to herself; that she did not recover her health all the time she was in deponent's house, and there was a good many days before she recovered her judgment: That about the beginning of April the deponent went out of town for ten or twelve days, and when she returned, thought her greatly better in her judgment, and did not ob-

serve that confusion, or that habit of speaking to herself that she had when she came to her house: That the deponent imputed the disorder in her judgment to the fright and terror she had been in Depones, That while she staid in the deponent's house, several people called for her; and the method used was, that after enquiring their names, she was acquainted of it, and such as she desired to see were admitted, and all others were refused access to her: That in particular Alexander Stewart, writer to the signet, was several times with her; but one day, John Wightman, the deponent's son, a former witness, having gone out of town, directed the deponent that when any persons were admitted so see Mrs Wright, or Jean Key, the deponent should be present: That after he was gone, Mr Stuart having called, the deponent told him that he might see Mrs Wright; but the deponent behoved to be present: That Mr Stuart asked if the deponent had Mr Wightman's orders for that, which she said she had, and therefore, after staying with Mrs Wright but a little time, Mr Stuart went away: That the deponent's son, Mr Wightman, having returned home the next day, the deponent informed him of what had happened; and her son said that she had done wrong in mistaking his orders, for that Mr Stuart should have access to converse with her alone; and thereupon went, as he told the deponent, to find Mr Stuart, and acquaint him that it was a mistake: and accordingly thereafter, Mr Stuart had access several times to converse with her by herself alone. Depones, That before the circuit at Perth, while Mrs Wright was in the deponent's house, the said

Mr Stuart and Mr David Græme, advocate, came to Mrs Wright and asked her, what she was minded now to do? and Mrs Wright answered that she would tell the Lords, when she came there, what she was amind to do. Mr Stuart replied, you may hang these men, but remember that you'll hang your own husband; for all the ministers in Scotland cannot disannul the marriage; for you have owned it to several people, and particularly you have owned it at my house to my wife and me, and to Mrs Græme. To which Mrs Wright replied, Yes, says she, but I was not then at my liberty; and this she also answered to another question of Mr Stuart's, Why did she not then say so? Depones, That Mr Stuart did not seem satisfied with her answer, but insisted with her farther; and the deponent said, that she thought it hard that they should urge Mrs Wright any farther, when her lawyers or writers were not present, and Mr Græme said, that he was satisfied that it was not proper for them to advise their clients, the M'Gregors, to appear at the Circuit Court at Perth. And further depones, That so far as she knows, neither the deponent's son, nor any other in the family, interposed with Mrs Wright, or gave her any advice not to return to, or adhere to Robert Campbell as her husband, but left it altogether to her own free choice. And being further interrogate, Depones, That while she staid in the deponent's house, she went often abroad to the meadows, to the markets, and other places in town, and once to Corstorphine; but never to any place alone, without some one person of the family at-

tending her, except to Mrs Shiels's who lives in the same street with the deponent; and to that house Mrs Wright went several times alone, without any person in company with her; this Mrs Shiels being aunt to Mrs Wightman, the deponent's daughter-in-law. And depones, that if Mrs Wright had been so minded, she might, without any difficulty, have made her escape out of the deponent's house. And being interrogate for the pannel, depones, That there were sentries upon Mrs Wightman's door; but they never hindered Mrs Wright from going abroad when she had a mind.

Thereafter HIS MAJESTY'S ADVOCATE declared he passed from all farther proof of the libel; and the pannel for his exculpation adduced the witnesses after deponing: viz.

ALEXANDER STUART, writer to the Signet, who depones, That about the end of February, or beginning of March 1751, the deponent was called by James Drummond, the pannel, to come to him in his lodgings, which, to the best of the deponent's remembrance, was in one Mrs Oswald's, at the foot of Niddry's or Blackfriar's Wynd, the deponent does not remember which; which the deponent did, and there found the pannel and Jean Key, now deceased, whom the pannel introduced to the deponent as wife to the pannel's brother, Robert: That some short time after, the pannel told the deponent the history of the said Jean Key's marriage with his brother Robert, as set forth in the bills of suspensions, drawn by the deponent, and signed by

him and the said Jean Key; and complained, that a sequestration of the said Jean Key's estate had been made by the Court of Session, upon the supposition that she had been carried away and detained in captivity by Robert Campbell, her husband, the pannel, and others, his accomplices, which was not true; and desired the deponent to take such legal measures as were necessary to procure the sequestration removed: That the deponent thereupon asked Jean Key whether the facts told him by the pannel were true; and if she was willing to adhere to her marriage with Robert Campbell her husband, and whether she wanted to have the sequestration of her estate and effects removed; to all which the said Jean Key answered in the affirmative. Depones, That this was done in presence of the pannel; and that the deponent desired to have the facts in writing, whereof the memorial now exhibited is the principal then delivered to him, either by the pannel or Jean Key, the deponent cannot be positive which; but he rather thinks it was by the pannel, in her presence; and the memorial is now marked by the deponent. Depones, That the pannel desired him to employ Mr David Græme as a lawyer, and any other whom the deponent should incline: That the deponent made choice of Mr Home, now Lord Kaimes: That they were desirous to see Jean Key by herself, and for that purpose Jean Key was carried up to Mr Græme's house, where Mr Home and the deponent likewise came; and Mr Home, in presence of Mr Græme and the deponent, interrogated the said Jean Key with respect to her mar-

riage, and the manner of it, whether she was carried away against her will, or inclined to adhere. Depones, That to the best of his memory Jean Key's answer was, That she was carried away partly with her will, and partly against her will: That she was not ill used, and was willing to adhere to her marriage with Robert Campbell, which was voluntary, and not forced as she then said: Whereupon the gentlemen present, viz. Mr Home, Mr Græme, and the deponent, told her, that if she was under any constraint, and not willing to adhere to her marriage, she ought to tell it freely, and they would endeavour to procure her liberty, or some words to that purpose: To which the said Jean Key answered, that she was under no constraint, and was willing to adhere to her marriage, or words to that purpose. Depones, That she appeared to be cheerful, and in good enough health and spirits. Depones, That Mr Home then agreed to be lawyer for her, and concerted the drawing a bill of suspension of the sequestration of her estate; and that Mr Home undertook to draw a petition to the Court of Justiciary for having the pannel admitted to bail, in respect there were warrants out against him to apprehend him; which petition was accordingly drawn by Mr Home, but was not presented in respect the bill of suspension was refused. Depones, That Mr Græme at that time proposed that Jean Key should see his lady, and likewise be brought to visit Mrs Stuart, the deponent's spouse, with whom he imagined Jean Key would be more free and open than with her agent or lawyers: That the said Jean Key did accord-

ingly visit the deponent's spouse frequently, before Jean Key was confined, and came sometimes by herself, and sometimes accompanied by Mr M'Nicol, brother-in-law to the pannel, who generally left her at the deponent's house, where she continued frequently till towards night: That Mr M'Nicol came and carried her back to her lodgings; and when Mr M'Nicol did not come, the deponent sent his servant with Jean Key to her lodgings. Depones, That Mr M'Nicol has some office in the excise, and resides in the town of Edinburgh or suburbs. Depones, That Jean Key was mostly present in the deponent's house, when the two bills of suspension mentioned in the indictment were drawn by him for her and her husband; and that the doponent interrogated her particularly upon all the facts set forth in the bills, and that she declared they were all true. Depones, That when the first bill of suspension was finished, the deponent called for his two clerks, Hugh Rose and Alexander Syme, and caused the bill to be read over to her; and told her, in their presence, that she ought not to sign the bill, if the facts represented in it were not true; and that if she was under any constraint, the deponent would not only take no concern for Robert Campbell, her husband, or his accomplices, but would assist her in procuring her liberty. To which the said Jean Key answered, That the facts set for h in the bill of suspension were true: That she was resolved to adhere to her husband, and to sign the bill. Depones, That the said Jean Key did accordingly sign the first bill of suspension, along with the deponent, in

presence of the said Hugh Rose and Alexander Syme. Depones, That the deponent went the night before the bill of suspension was to be presented to the Lords, to the pannel's and Jean Key's lodgings, where it was concerted, that one Murray, a merchant or shop-keeper in Edinburgh, whom the deponent found at that time in company with the pannel and Jean Key, should next morning call at Jean Key's lodgings, and bring her half an hour before nine to the deponent's house, in order to go along with him to the Lords of Session, to attend the advising of the bill of suspension. Depones, That the deponent attended next morning till after 11; and in respect Jean Key did not come to his house as concerted, the deponent did not attend the Lords of Session: That the Lords afterwards called for the deponent, and asked him the reason why the said Jean Key had not appeared as mentioned in the bill; and why the deponent himself had not attended? To which the deponent answered, that Jean Key had not come as concerted to attend their Lordships along with him, and that he was determined to take no concern, unless she appeared before the Court and adhered. Depones, That the evening of that same day, about 8 o'clock at night Jean Key came alone to the deponent's house all in tears, and told the deponent that the said Murray had carried her from her lodgings, in order to have brought her as he pretended to the deponent's house; but instead of that he had carried her to a public house in the same close, which the deponent afterwards understood was the house of John Ross, vintner, where he had made her drink some white wine

and sugar: That about one o'clock he had carried her from the house of John Ross to a laigh cellar, where he detained her until about 8 o'clock at night that she came to the deponent's house: That he had proposed to her to desert Robert Campbell and his friends, and marry him, and he would carry her to her own friends, and procure their consent; but the said Jean Key refused to comply with his request, and told Murray she was determined to adhere to her marriage with Robert Campbell; upon which Murray left her, and she came to the deponent's house. Depones, That upon recollection the first bill of suspension had been refused by Lord Minto before then; and it was in order to sign and attend the advising of the second bill, that the said Jean Key had promised to come that morning to the deponent's house: That some time after she came to the deponent's house that night, the deponent carried her into his wife's bed-room, where Mr Murray of Blackbarony, and several others, were present; and that the deponent, in presence of all that were then in the room exhorted Jean Key to tell the truth, and not to impose upon him or herself; and if the facts set forth in the bill of suspension were not true, not to sign it. Depones, That he then caused the second bill of suspension to be read in Jean Key's own presence, and in presence of Mr Murray of Blackbarony, and all the company then in the room, and that Jean Key signed the bill in their presence. And depones, That the said Jean Key, to the best of the deponent's observation, was in sound judgment during the whole time that the above matters

were in agitation. Depones, That the deponent went frequently to see Jean Key in Mr Wightman's house, after she was sequestrate by order of the Court there; and that she appeared to him to be a good deal graver, and more concerned than before she was carried to Mr Wightman's. Depones, That Jean Key told the deponent, that Mr Ewen, bailie to the Duke of Montrose, came to the town where she lived along with Robert Campbell, and that Robert Campbell sent Mr Ewen to Jean Key's mother to ask liberty to see her, and her consent to his marriage; and her mother having refused both, she had occasion to see Robert Campbell that night, who told her he would come with some friends and carry her, Jean Key, off, which made her expect he would do so. But did not know the time he was to come. And a letter given out by the pannel, and produced in his exculpation, bearing date the 4th of December 1750, being shewn to the deponent, depones, The pannel told the deponent that he had a letter of the like contents with that one now shewn him: But that he never saw the said letter now shewn him; but having read over the letter, what he meant by saying it was of the contents of the letter now shewn him was, that it was a letter concerning the marriage. Depones, That the pannel, to the best of the deponent's knowledge, was at Edinburgh at the time of refusing the second bill of suspension. And being further interrogate, depones, That Mr Home's meeting with Jean Key in Mr Græme's house as above, was before drawing the first bill of suspension.

Mr David Græme, advocate, depones, That in spring 1751, or the winter preceding, James Drummond, the pannel, wrote to the deponent, acquainting him that his brother Robert had married an heiress: That it was represented that she had been forcibly carried off, and was still detained in captivity; whereupon the Lords of Session, upon an application, had sequestrated her estate, and appointed a factor thereon; and the Lords of Justiciary had issued out warrants for apprehending Robert, the pannel's brother, the pannel himself, and others supposed to be concerned therein: That the pannel informed the deponent in that letter, that the lady said to be carried off by force, was so far from being so, that she not only voluntarily married the pannel's brother, and was well pleased to live with him as her husband; but that any thing that had the appearance of force at the beginning, was done by her own consent, and therefore desired advice what was proper to be done; and suggested particularly, that if it was thought fit he would bring, or send the lady into Edinburgh: That in answer to this letter the deponent wrote, he thought it highly proper to send the lady to Edinburgh: That sometime after this, the deponent received a message, acquainting him that the pannel was in town, and the lady along with him: That thereupon the deponent went to the place where he was told the pannel and she lodged, and heard him, in presence of the lady, tell her story much in the same terms as he had formerly wrote his letter in, which she did not contradict: That the deponent does not remember

that he asked her then any questions, being resolved to examine her by herself: That he therefore desired her to take her breakfast in his house, as he thinks, the next morning: That when she came there, there was a guide with her to shew her the way, but left her immediately: That the deponent then used all his endeavours to find out what was the truth of the matter, whether she was carried off forcibly at first, and whether she was then satisfied to live with the pannel's brother as her husband; but his chief attention was to the last: That she assured the deponent she was very well pleased to live with the pannel's brother as her husband: That she had willingly married him, and that she had even given encouragement to her being carried off in the manner she was, as she knew she was to be carried off, although she was not acquainted with the precise time it was to happen, and that any resistance she made, or reluctance shewed, was owing to the presence of her mother, who, she knew, was against the thing, and to her being so recently a widow: That the deponent being willing to be farther satisfied in this matter before he took any concern upon him of her affairs, desired his wife, Mrs Græme, and his sister, Elizabeth Græme, to converse with her upon that subject, imagining she might possibly be more free with them than she had been with him, and for that end desired she might stay in his house and dine: That she accordingly did so, and drank tea in the afternoon: That the deponent's wife and sister reported to him, that they had conversed with her particularly upon that affair: That she had given

them the same information the deponent has already said she had given to him: And that they were fully satisfied she was extremely pleased to live with the pannel's brother as her husband: That in the afternoon of that day, Mr Henry Home, advocate, and Mr Alexander Stuart, writer to the signet, came to the deponent's house, and in presence of them and him, the lady, Mrs Wright, told her story as above deponed upon: That thereupon it was agreed there should be a bill of suspension offered, setting forth the facts, and praying a suspension of that act of the Lords of Session, sequestrating the estate, in regard that it had been obtained upon a misrepresentation of facts; and it was likewise concerted, as the deponent thinks, that an application should be made in name of the pannel to the Court of Justiciary, craving to be admitted to bail: That in consequence of this, the deponent drew reasons of suspension, which he afterwards understood Mr Stuart had turned into the form of a bill, with some variations: That Mrs Wright was advised to appear in Court herself when the bill was to be presented: That the deponent was likewise ready to appear that day that he was informed the bill was to be presented, but was told in his way to the Parliament House, that Mrs Wright could not be got, an account of which the thing was put off for that time; and when a bill was to have been presented another time, it being proposed, as the deponent understood, that the same should be offered to three Lords, and that these Lords should meet together in the Lord Justice Clerk's house, the deponent was along with

Mrs Wright when that bill was presented: That these Lords, viz. the Lord Justice Clerk, the Lord Drummore, and Lord Elchies, thought fit to appoint Mrs Wright to be lodged in the house of Mr Wightman in the Potterrow under his care and inspection for some time: That any time ever the deponent saw Jean Key, she appeared to him to be a discreet country bred girl; and when she appeared in the Lord Justice Clerk's house, observed no other change upon her than this, that when she began to declare her willingness to adhere to the pannel's brother as her husband, and that her mother who was there present appeared to be fainting away, she seemed somewhat confounded, and desired the deponent to endeavour to get her removed out of the room: That after Mrs Wright was sequestrated in Mr Wightman's, the deponent had occasion to see her oftener than once: That he remembers at one of these times, which he thinks was not the first time, he asked her if she continued in the same sentiments she had formerly expressed to him? to which she answered, she did not know, but thought the fugitation an unlucky circumstance; upon which the deponent said, that that might be a very material circumstance to consider in the making of a marriage; but if the marriage was made in the manner he had learned from her it was, it could not make it void: And further depones, That to the best of his knowledge, he is not possessed of the letter first mentioned above: That either in that letter, or some other letter wrote by the pannel to the deponent before he came to town, there was a letter sent to him, signed Jean Key,

and addressed to Robert Campbell, importing her consent to the being carried off. And being shewed a letter with that subscription, of the date of the 4th of Dec. 1750 referred to, and produced by the pannel in his exculpation, he thinks it is the same, though he cannot be positive, and that that letter the deponent returned, as he imagines, inclosed in the answer he wrote to the pannel: And further depones, That the pannel was in Edinburgh after the sequestration of Mrs Wright; and being interrogated if Mrs Wright was frequently in the deponent's house?, depones, That he does not remember that she was there at any time except the day above deponed upon. And further depones, That the above letter of the 4th of December 1750, was not, so far as the deponent remembers, laid before Mr Home and him, when they met. And further depones, That except the letter above mentioned of the 4th of December 1750, he never saw any letters betwixt Mrs Wright and Robert Campbell, nor remembers to have received information from Mrs Wright, that such letter had past between them, or received such information from the pannel.

Robert Campbell of Torry, Sheriff-substitute of the shire of Perth, depones, That about the latter end of February 1751, he thinks the last Monday thereof, the pannel, his brother Robert, and Jean Key, came to the house of Mr Campbell of Kilpunt, near Cardross in Menteith, late of an evening, and staid there all night: That next

morning he desired the landlord to invite the pannel and his brother to a walk, that he might have occasion to talk to the said Jean Key upon a rumour that had prevailed in the country of her having been carried off from her house by force, and detained in captivity by the pannel and his brother Robert, which was accordingly done; and then he took occasion to speak of the above rumour to Jean Key, and acquainted her, that as he was Sheriff-substitute of that part of the country, he thought it his duty to acquaint her, that if there was any truth in that rumour, he would deliver her from the force that detained her, find horses for her service, and send her to her friends, or where she desired to go; and that he thought he was in a country where he could get sufficient force to execute what he proposed to her. This she absolutely refused, adding, that if she had been so minded, she could have frequently escaped; and that Robert Campbell had frequently offered her, as well as the pannel, horses to go to see her friends, which she had rejected: That the landlord Kilpunt, having after this come in, he repeated before Jean Key and Kilpunt the same proposals; to which she gave the same answer, Kilpunt at the same time offering to be aiding to the deponent in making good his proposals: That Jean Key after this having walked out to the garden by herself, he followed her, begged of her to unbosom herself to him; assuring her again, that he was able to rescue her, to which she repeated her former answer. And being interrogated for the Lord Advocate, depones, That he heard there were warrants out against the pannel and his

brother Robert about this very time, and believes they were presented to the then ensuing Circuit Court at Perth. And being asked, Why he, who was Sheriff-substitute, did not then apprehend them according to his duty? Depones, That there was a great difference between rescuing Jean Key and apprehending them; to do the first, no more was necessary than to shut the doors of the house, and to keep the pannel and his brother out; but to do the other, he thought he had not force enough, having no more force than himself and his servant, and Kilpunt and his servant; and the pannel and his brother had two servants along with them. Depones, That he does not remember that he was acquainted by the Sheriff-depute of Perth, that there was warrants out against the pannel and his brother, and directing him to use his endeavours to apprehend them before this time. And depones, That Jean Key acquainted him at this time, that she and the pannel were going to Edinburgh together. Further depones, That he did not know of the pannel and his brother's being presented to the Circuit Court at the time above mentioned.

John Campbell of Kilpunt, depones, That in the end of February 1751, Jean Key, deceased, the pannel, and his brother Robert, came to the deponent's house at Lochend of Monteith: That Robert Campbell, one of the Sheriff-substitutes of the county of Perth, with his brother, were at the same time at the deponent's house: That the deponent spoke with the pannel and Robert Campbell, and

advised them to send home Jean Key to her friends; for that if she was willing to adhere to Robert Campbell, she would certainly return to him, and if otherwise, they were better without her: That the pannel and his brother Robert, agreed to send her home accordingly, provided she should be willing to go: That the above Robert Campbell, the Sheriff, desired the deponent to carry out the pannel and his brother, that he, Robert Campbell, might have an opportunity to speak to Jean Key by herself: That when the deponent came in again, he heard Robert Campbell the Sheriff, offer to Jean Key to provide her horses and servants to send her home to her friends; but she absolutely refused to go, though the deponent at the same time told her that the pannel and his brother Robert agreed she should go: That Jean Key, with the pannel, set out that same day for Edinburgh, having heard that her estate was sequestrated by the Court of Session.

Hugh Drummond, one of the elders of the parish of Balquhidder, depones, That he being a member of the kirk-session of the church of Balquhidder, did see Robert Campbell, brother to the pannel, with Jean Key, appear before the said session upon a Sunday, when Mr Ferguson the minister, first asked the said Robert Campbell if he was married to that woman Jean Key, who answered he was; and then he asked Jean Key if she was married to the said Robert Campbell, and she also answered that she was. Depones, That when Ro-

bert Campbell lived in the said parish, he heard nothing against his character; and that he used to come to church sometimes as other people did: That he knows Robert Campbell was formerly married to one of the name of Grahame, a daughter of Grahame of Drunkie's.

DONALD FERGUSON, elder in the said parish of Balquhidder, depones, That once upon a Sunday, after the congregation was dismissed, he saw Robert Campbell, brother to the pannel, and a woman called Jean Key, appear before the kirk-session of Balquhidder; when Mr Ferguson the minister asked the said Robert Campbell if he was married to that woman Jean Key, who answered he was; and then he asked Jean Key if she was married to the said Robert Campbell, who also answered that she was: That he knew the said Robert Campbell when he lived in that parish, and has seen him sometimes in the church: That he knows he was formerly married to one of the name of Grahame, a daughter of Grahame of Drunkie's.

KENNETH TULLOCH, writer in Edinburgh, depones, That some time after Jean Key was lodged in Mr Wightman's house by warrant from this Court, Mr Govan, writer in Edinburgh, came to the deponent and told him, that Jean Key wanted a sight of some of the books of adjournal: That accordingly the deponent looked out for the book she wanted: and in company with Mr Haldane and Mr Govan, he carried the same to her: That

when they were come there, at the desire either of Jean Key or Mr Govan, he turned up Robert Campbell *alias* M'Gregor, his sentence of fugitation, and the trial against Ronald and James: That he read part of the said trial, and that she read other parts of it, and that she desired the book might be left there that night, and told at the same time, that she wanted to speak to Mr Haldane in private; and upon that they two left the room and the book, upon Mr Haldane and Mr Govan assuring him that the book would be safe.

DONALD M'INTYRE, indweller in Edinburgh, depones, That in the second month of winter, year 1750, being the month in which Yule is, and the 4th day of that month, the deponent being at Callander, met Robert Campbell *alias* M'Gregor, brother to the pannel, whom the deponent had known from his, the said Robert's infancy, and he called the deponent aside, and as he knew the deponent was acquainted with the country, asked him if he would go an errand for him to Edinbelly; and the deponent having agreed, he gave him a letter addressed to Mrs Wright, with two gold rings, whereof one was a stone ring, and the other a plain; and which he desired him to deliver to Mrs Wright at Edinbelly: That this happened on a Tuesday; and the deponent set out for Edinbelly; and being a night by the way, arrived there only on Wednesday at ten o'clock, as the deponent computes, having no watch: That the deponent being solicitous to deliver these things to Mrs Wright alone, whom

he had never seen, and that no other person should be privy to it, went first into a change-house opposite to the door of Mrs Wright's house, and called for a dram, and enquired about the health of Mrs Key, Mrs Wright's mother, and the family; and there they told him, that Mrs Key was that morning gone down the country; and the deponent being thereby the less apprehensive of being discovered, went to the door of Mrs Wright's house and knocked; and the door being opened by a servant maid, the deponent said he wanted a word of the young woman, Mrs Key's daugher, and thereupon the servant brought Mrs Wright to the deponent, then standing in the trance, the entry to the house: That the deponent told Mrs Wright he wanted to speak to her by herself, if she pleased; upon which she put the deponent into a room upon his left hand, and which was opposite to the door of the kitchen, that was upon his right hand, and then put to the door of the room, but not quite shut: That the deponent then searched for his letter, but was some time of finding it, being in a letter-case among several other papers; and Mrs Wright on getting and opening the letter, looked sometimes at the deponent and sometimes at the letter, and then shut the door of the room close: That then the deponent took out of his pocket the two gold rings, which she received from him, and put upon her fingers, and complained that they were much too big for her small fingers; but the deponent being willing that she should accept of the rings, said that a goldsmith would easily mend that fault:

That after reading the letter, she opened a press in the room and took out pen, ink, and paper, and sat down to write a letter; but before the letter was half wrote, she gave the deponent a dram, and gave him bread, butter, and cheese, which they call a caper; and after having finished her letter, she asked the deponent, whether he was to return straight to the place he came from, without going anywhere else; and he telling her he was to return straight, she gave him the letter and said, I know that you know the contents of the letter you brought me, and tell Robert Campbell, that all now depends upon himself; that I am very willing to go with him, but dare not tell my mother; for I have had no peace since she suspected that there was a courtship between us; that her mother and she had not agreed so well since her last husband's time: That she could not expect she would ever agree to her marrying a Highlander; and that if Robert Campbell did not come and take her away upon the Saturday and Sunday then next, her friends would have her put out of the way from him. Depones, That she said that her mother and she had great dealings with the Laird of Glins, and all her hopes were, that he would make up her peace with her mother; and the deponent said, if he was any friend of hers he would certainly do so. Depones, That the deponent did not mean to say, as above, that he was to return straight to the place he came from, but that he was to go straight to the Kirk of Balquhidder to Ronald Campbell's house, where he was to find the above named Ro-

bert, his brother: That the deponent went straight from thence to Balquhidder Kirktown, to Ronald's house, where he arrived at nine of the clock in the morning, when they were getting out of bed, and met Robert Campbell at the door, where the deponent related to him the success of his message. And depones that he cannot write, neither can he read any, but some words of the Irish language.

Patrick Murray, goldsmith in Leith, depones, That winter last was twelve-months the deponent received a message in a letter, signed by Robert Campbell, the pannel's brother, wherein he desired him to fit two rings he had sent by the Fort William post, according to a measure, which the deponent thinks was a thread, sent for Jean Key his wife's finger; he thinks that he received the rings from Malcolm M'Farlane, the Fort William Post: That he carried them in his pocket, which he took out of it after he delivered the letter: That they were done up in a piece of paper: That one of them was a plain gold ring, and the other had a Bristol stone in it; and that, according to the directions given him, he smelted down the plain ring and made a new one, and cut the other and southered it again, so as to answer the measure sent him by the thread. Depones, That stone rings have seldom the mark of the maker upon them, and that the plain ring was so much worn, that the mark was defaced, so as he could not perceive who was the maker of the ring: That when he smelted it he added some gold to it

to make the ring complete: That after they were done he gave them to the same post from whom he received them, in four days, to be delivered to the said Robert Campbell, with an account of the balance due to him. Depones, That after Jean Key came to Edinburgh, in the latter end of February or beginning of March, he had occasion to see her several times, both in Leith and in Edinburgh: That when she was at Leith he did not mention any thing concerning the rings to her; but after she came to Edinburgh he observed them upon her fingers, and asked how they fitted her; and she said they fitted her extremely well, and desired the deponent to put a poesy upon the plain ring; and he having asked what poesy she would have put on it? She answered she had no particular fancy to any poesy, but desired him to suggest one that he thought proper. The deponent then told her that he had several times put upon married women's rings the first chapter of Ruth, the 16th and 17th verses And a bible being in the room, the deponent shewed it to her; and she being pleased with it, he put it on the ring.

The procurators for the pannel renounced all further probation.

The Lords Justice Clerk and Commissioners of Justiciary ordain the assize instantly to inclose in this place, and to return their verdict against this night, being Wednesday the 5th day of August instant, at 5 o'clock in the afternoon, in the other Court House, and continue the cause till that time;

and appoint the whole fifteen then to be present. As also, continue the diet against Duncan M'Gregor, *alias* Drummond, to that time, and appoint the pannel, James M'Gregor, to be carried back to prison.

5th August 1752.

Intran.—James M'Gregor, *alias* Drummond, *alias* James More, pannel.

Indicted and accused as in the former sederunt. The persons who passed upon the assize of the pannel returned their verdict in presence of the saids Lords, whereof the tenor follows:—

At Edinburgh, the 5th day of August 1752 years.

The above assize having inclosed, made choice of Sir John Inglis of Cramond to be their chancellor, and Andrew Chalmers of Nether Dalry, to be their clerk; and having considered the indictment pursued at the instance of William Grant of Prestongrange, Esq. his Majesty's advocate, for his Majesty's interest, against James M Gregor, *alias* Drummond, *alias* James More, pannel, with the Lords Justice Clerk, and Commissioners of Justiciary, their interlocutor thereupon, with the depositions of the witnesses adduced for proving thereof, and the depositions of the witnesses adduced for the pannel's exculpation, they all in one voice find it proven, that at the time libelled the said James M'Gregor, *alias* Drummond, *alias* James More, the pannel, with his brother, Robert Campbell, *alias* M'Gregor, and divers other lawless persons, some of whom, and particularly the pannel,

were armed with guns, swords, pistols, and other warlike weapons, entered the house of Edinbelly, which belonged to the now deceased Jean Key, designed in the indictment, and in which she and her mother and family then dwelt and resided, in a lawless, forcible, and hostile manner, and did, within the said house, attack, invade, and lay violent hands upon the person of the said Jean Key, in order to carry her out and away from her said house: And by a majority of voices they find it not proven, that the said Jean Key was privy, or consenting to the said Robert M'Gregor, *alias* Campbell, or the pannel, or their accomplices, entering the said house, for the design of carrying her off; and they all, in one voice, find it proven, that the pannel, in company with the said Robert M'Gregor, *alias* Campbell, his brother, and others their accomplices, at the time libelled, forcibly carried the person of the said Jean Key out of and away from her foresaid house of Edinbelly, to the house of John Leckie, maltman in Buchanan, and from thence to a public house at Ruindennan, then possessed by Alexander Coll M'Coll, *alias* M'Gregor, and there, or in the neighbourhood thereof, put her aboard of a boat upon the loch of Lochlomond. But they also all in one voice, find it proven, for alleviation of the pannel's guilt in the premises, that the said Jean Key did afterwards acquiesce in her condition; and finally, the assize all in one voice, find the forcible marriage and rape libelled not proven. In witness whereof our said Chancellor and Clerk, in our name, have, subscribed these presents, (consisting of two pages,)

place and date foresaid, in our presence and by our appointment.

(Signed) *JO.* INGLIS, *Chancellor.*
ANDw. CHALMERS, *Clerk.*

The Lords Justice Clerk, and Commissioners of Justiciary, delay pronouncing sentence upon the verdict against the pannel till to-morrow morning at nine o'clock, in the other Court House, and continue the diet against Duncan M'Gregor till that time; and ordain parties, witnesses, and assizers, then to attend, and the pannel to be carried back to prison.

In the meantime the following letter was addressed by certain persons of the jury to the Lord Justice Clerk:

My Lord,

Hearing that some doubt is made as to the meaning of that head of the verdict returned this day, upon the indictment at the instance of his Majesty's Advocate against James Drummond, *alias* MacGregor, whereby the assize find it proven, for alleviation of the pannel's guilt in the points premised, That Jean Key did afterwards acquiesce in her condition: We, of the assize, give your Lordships this trouble, to declare, That it was the unanimous intention and design of the jury, in using that expression of alleviation, to exempt the pannel from capital punishment: We cannot give your Lordships and the Court the assurance of this under the hands of the whole jury, because the Chancellor

and some others of the Members are gone out of town; but so many of us as could be got convened have signed this. And we are, My Lord, Your Lordship's most obedient, most humble servants,

AND. CHALMERS, *Clerk.*
JO. DUNSMURE,
RO. BAILLIE,
JOHN YAIR,
ANDR. MUAT,
JOHN FORREST,
ROBERT LITHGOW,
ALEXR. PURVES,
ALEXR. NOBLE,
EDWARD CAITHNESS.
GEO. STEVENSON.

Edinburgh, 5th August,
1752.

6th August 1752.

Intran.—James M'Gregor, *alias* Drummond, *alias* James More, pannel,

Indicted and accused as in the former sederunts:

After hearing Counsel upon the import of the verdict, the Lawyers for the pannel specially desired of the Court, that they might be allowed an opportunity to inform upon the debate.

(Signed) DAV. RAE.

The Lord Justice Clerk, and Lords Commissioners of Justiciary, in respect of the above desire of the pannel and his procurators, and after hearing

parties *hinc inde* as above, ORDAIN both parties procurators to lodge informations in the Clerk's hands, in order to be recorded; the procurators for the pannel to give in theirs against Thursday the 13th instant, and the Lord Advocate to give in his against the 20th inst. and supersede advising the verdict and debate till Monday the 20th of November next, N. S. at 11 o'clock forenoon, in this place, being the time to which both parties procurators desired the same might be continued; and ordain the pannel, in the mean time, to be carried back to prison; as also, continue the diet against Duncan M'Gregor till the said 20th of November next, at 11 o'clock forenoon, in this place; and ordain witnesses and assizers then to attend, each under the pains of law.

Informations were accordingly given in and recorded.—(For an abridgment of these informations see Appendix.)

20th November 1752.

The which day, the criminal action at the instance of His Majesty's Advocate against James M'Gregor, *alias* Drummond, *alias* James More, against whom a verdict was returned upon the 5th day of August last; and the advising thereof continued to this day, being publicly called by a macer of Court, and the said James Drummond not compearing nor brought to the pannel, although upon the last continuation committed prisoner to the tolbooth of Edinburgh by order of Court, It was moved, that the Magistrates of Edinburgh should

be called, and the keeper of their tolbooth. And George Drummond, Esquire, late Lord Provost of Edinburgh, and James Rob, keeper of the said prison, being both present, and interrogate anent the prisoner, they severally declared, That having in September last received anonymous letters, acquainting them that the said James M'Grigor's escape from the tolbooth, either by force or fraud, was intended, the Magistrates of Edinburgh made application to the Lord Justice Clerk, then on his circuit at Ayr, for a warrant for having him carried from the tolbooth to the Castle of Edinburgh, for his more safe and sure custody; agreeable to which his Lordship granted such warrant, and transmitted the same to General Churchhill; and upon that warrant, and an order on the foot thereof from the General, James M'Grigor was delivered over to a party of the City Guard, who conducted him to the Castle, and delivered him over to the Deputy Governor; and that they were now informed, that on Thursday the 16th inst. he had made his escape. Whereupon the Lord Justice Clerk acquainted the Court, that he had granted the above warrant upon application of the Magistrates of Edinburgh; and his Lordship and the Lord Advocate likewise acquainted the Court they had received information that the said James M'Gregor had made his escape as above.

The Lord Justice General, Lord Justice Clerk, and Lords Commissioners of Justiciary continued the diet, at the instance of His Majesty's Advocate, against James Drummond, *alias* M'Gregor,

alias James More, until Monday the 18th day of December next to come, at 11 o'clock forenoon, in this place: As also continued the diet, at the instance of His Majesty's Advocate, against Duncan M'Gregor, *alias* Drummond, to the same time and place; and ordain parties, witnesses, and assizers, and all concerned, then to attend, each under the pains of law: And in the mean time grant warrant to macers and messengers at arms, and all other proper officers of the law, to pass, search for, seize, and apprehend the person of the said James Drummond, *alias* M'Gregor, *alias* James More, wherever he can be found within Scotland; and being apprehended, to transmit him to and incarcerate him within the tolbooth of Edinburgh: Requiring hereby the Magistrates of Edinburgh and keepers of their tolbooth to receive and detain him prisoner therein accordingly, ay and while he be liberate by due course of law: And the said Lords recommend to His Majesty's Advocate, and the solicitors for the Crown, to enquire, or cause enquiry to be made, and a precognition to be taken, in the best way and manner they can, in relation to the way and manner of the said James Drummond, his making his escape out of the Castle of Edinburgh, and to report the same to the Court on or before the said 18th day of December next to come: And ordain the clerk of Court to lodge an extract of the said warrant fo apprehending the said James Drummond, *alias* M'Gregor, *alias* James More, with the Commissioners of His Maje.ty's B ard of Customs; hereby recommending t them to send notice of the said warrant to the officers of the cus-

toms at the different ports of Scotland, in order, if possible, that the said James Drummond's escape may be prevented.

(Signed) ARGYLE. *I. P. D.*

22d January 1753.

The said day his Majesty's Advocate reported to the Court, that agreeable to their Lordships' recommendation of the 20th of November last, two precognitions had been taken relative to the way and manner of the escape of James M'Gregor, *alias* Drummond, *alias* James More, pannel; one of those under the direction of the military officers in the castle, of such persons who knew any thing of the matter as belonged to the castle; and the other under the direction of his Lordship and his Majesty's solicitors; which last his Lordship would order forthwith to be lodged in the clerk's hands, and that he would give directions for a copy of that one taken in the castle to be also lodged.

The diet was continued from time to time till 10th March 1755, when it was adjourned "ay and until the said James M'Gregor's apprehension."

Nothing farther appears on the records as to James M'Gregor's escape; but the following particulars relative to it appear in the Scots Magazine for November 1752. (Vol. XIV. pages 556-7.)

"James M'Gregor, *alias* Drummond, under trial for carrying off Jean Key of Edinbelly, made his escape from Edinburgh Castle on the 16th. The

manner of it is thus related. In the evening he dressed himself in an old tattered big coat put over his own clothes, an old night cap, an old leather apron, and old dirty shoes and stockings, so as to personate a cobler. When he was thus equipped, his daughter, a servant maid who assisted, and who was the only person with him in the room, except two of his young children, scolded the cobler for having done his work carelessly, and this with such an audible voice as to be heard by the sentinels without the room door. About seven o'clock, while she was scolding, the pretended cobler opened the room door, and went out with a pair of old shoes in his hand, muttering his discontent for the harsh usage he had received. He passed the guards unsuspected; but was soon missed, and a strict search made in the castle, and also in the city, the gates of which were shut, but all in vain. The sergeant, and some of the soldiers on duty, were put under confinement. On the 20th the Court of Justiciary met to judge of the import of the verdict returned against him, and continued the diet till the 18th of December. We are told that the commissioners of the customs, in consequence of an application made to them, dispatched orders to their officers for strictly searching all ships outward bound, to prevent his escaping out of the kingdom. P S. A court-martial sat down in the Castle December 8, in consequence, it is said, of orders from above, to inquire into this affair. It consisted of one lieutenant-colonel, two majors, and ten captains. They rose on the 13th. Two lieutenants and four private men were put under arrest; but we have

not yet learned what is to be the result of their proceedings."

The foilowing notice occurs afterwards in the same Magazine, for December 1752, p. 606.

"A return from London to the report of the proceedings of the court-martial appointed to inquire into the manner of James Drummond's escape, arrived at Edinburgh December 30. In consequence of which, two lieutenants, who commanded the guard the night Drummond escaped, are broke; the sergeant, who had the charge of locking the prisoner in his room, is reduced to a private man; the porter has been whipped, and all the rest are released."

NOTICE.

It was the object of the Publishers to give from the most authentic records a full account of the proceedings in the trials of Rob Roy's Sons for the forcible abduction of the heiress of Edinbelly. The case of James M'Gregor, the eldest son, of course became the leading one; not only because he had taken the most active part in the enterprise, but because he was brought to trial before his brother Robert had been apprehended. In publishing a series of trials, all originating in the same transactions, founded on the same state of facts, and supported by the same, or nearly the same witnesses, some repetitions in the evidence became unavoidable. It will be found, however, that the depositions of the same witnesses in the different trials are not in all cases mere repetitions,—that besides the variety occasioned by the different direction given to the evidence in the trial of each individual, the detail of particular facts is more minute and curious in one case than in another; and that even in speaking to the same facts, the witnesses sometimes vary in their different examinations, in a manner which could not justly be overlooked in an authentic report of the proceedings. Influenced by these considerations, the publishers have endeavoured to comprise in their report every thing that appeared interesting or curious in the trials of the three brothers, and have studied accuracy in their account of the evidence, even at the hazard of appearing occasionally redundant.

1

TRIAL

OF

DUNCAN M'GREGOR,

BEFORE THE HIGH COURT OF JUSTICIARY, HELD AT EDINBURGH, JAN. 15, 1753.

SEDERUNT.

The Right Hon. CHARLES ARESKINE, Lord Justice Clerk,
LORD MINTO,
LORD STRICHEN,
LORD ELCHIES,
LORD DRUMMORE.

Intran. DUNCAN M'GREGOR, *alias* DRUMMOND, in Strathyre, in the parish of and shire of Perth, and now prisoner in the Tolbooth of Edinburgh,—*PANNEL:*

Indicted and accused at the instance of William Grant of Prestongrange, Esq. his Majesty's Advocate for his Majesty's interest.*

---

* *Note.*—The indictment in the case of this pannel is in the same terms with the libel against his brother, James M'Gregor, to which the reader is referred.

Pursuers.	*Procurators in Defence.*
Mr William Grant, his Majesty's Advocate.	Mr Ar. Lockhart.
Mr Patrick Haldane, and Mr Alex. Home, his Majesty's Solicitors.	Mr Andw. Pringle. Mr John Grant, Advocates.

The libel being openly read, and the pannel interrogate thereupon, he denied the same, leaving his lawyers to plead his defences.

LOCKHART, for the pannel, alleged, 1*mo*, That the libel was improperly laid, in so far as in the major proposition, three different crimes are accumulated together, very distinct in their nature, and different in their punishment; viz. Hame sucken, Ravishing of Women, or Forcible Abduction and Forcible Marriage; the first two whereof were, by the law of Scotland, understood to infer a capital punishment, and the third only an arbitrary; and therefore, separate relevancies ought to be determined. 2*do*, It appeared from the libel itself, that Hamesucken ought not to have been charged as a separate crime; because, from the facts libelled, there appeared no intention in the defender to have committed any injury or attack upon Jean Key in her own house; and therefore, no relevancy ought to have been found thereon by itself. 3*tio*, It was equally improper to lay ravishing of women by itself; because, from the facts as laid, there seems to have been no intention in Robert Campbell to commit a rape; and the alleged forcible abduction was not *libidinis causa*,

which was an essential requisite in the crime of rape; for an abduction, in order to bring about a forcible marriage, and a *copula* in consequence of such marriage, could not constitute the crime of rape, as being committed only with a view to marry. *4to*, The pannel denied his being guilty of all or any of the crimes libelled; and it was farther averred, that though several of the facts libelled should be proven, yet the pannel was altogether innocent, in so far as Robert Campbell, mentioned in the libel, made a previous acquaintance or correspondence with Jean Key, before the forcible abduction alleged in the libel; that Jean Key had consented to marry the said Robert Campbell, but was apprehensive her mother and other friends would not agree to it: That therefore it was concerted betwixt them, that Robert Campbell should come at the time libelled, with some attendants, and make a show of carrying her off by force, in order to save reflections from the mother and friends, that it might appear as if she married Campbell against her will, especially so soon after she had become a widow: That Robert Campbell, and some of his friends, particularly his brother James, having informed the pannel of this, and desiring the pannel to go along with them, the pannel not thinking he was going about any thing criminal, agreed to go along: That Jean Key, after some show of resistance before her mother, and other friends in the house with her, agreed and went away with Campbell, and soon after cheerfully consented to a marriage, and continued to live with him in great satisfaction for

some months; declaring to several persons of character who offered to relieve her, that she was married with her consent, and had no complaints to make: That afterwards, by the malice of Jean Key's friends, a sequestration of her estate having upon misrepresentations been obtained from the Court of Session, the said Jean Key repaired to Edinburgh, where, during a considerable stay, she had free access to every body she pleased, and in reality applied to sundry persons of character, to whom she freely declared her marriage was with her consent, and that she was resolved to live with her husband; and as the strongest evidence of this, she applied to the Court of Session, by two several bills of suspension, the 5th and 18th days of March 1751 years, setting forth more fully the above facts, and praying a removal of the sequestration; and particularly she made application to some persons of character and fortune to become cautioners for her in the suspensions. *5to*, And therefore, supposing Jean Key had been carried away forcibly, and ravished in the manner alleged in the libel, yet nevertheless her posterior consent must have freed Robert Campbell, the alleged ravisher, from the capital punishment, in terms of the act of the 4th of the 21st Parliament of King James the VI. and which posterior consent she could not have afterwards recalled, if she had been so minded; much more must such consent free the pannel from any capital punishment, who had no hand in that affair, but in consequence of the solicitations of James Drummond, who represented, that all was to be done in

concert with Jean Key, whereby the pannel had no reason to suspect any thing criminal was intended.

Advocatus answered, That as all the defences now pled for the pannel, save one, were formerly pled at great length in the late trial for the same crimes again James Drummond, and behoved to be fresh in their Lordships' memory, he would not trouble their Lordships with a new disputation upon them, but referred himself entirely to the pleadings in that trial; and did not doubt but their Lordships would pronounce the same judgment on the relevancy in this. With regard to the new defence for this pannel, that he was made to believe the matter was previously concerted betwixt Campbell and Jean Key, doubting of the relevancy of it, he would not oppose that the pannel should have a proof of it, as well as of all other facts and circumstances that might tend to his exculpation or alleviation of his guilt, leaving it to the jury to lay what stress they thought proper upon the import of the proof to be brought.

The Lord Justice Clerk and Lords Commissioners of Justiciary having considered the indictment, pursued at the instance of William Grant of Prestongrange, Esq. His Majesty's Advocate, for His Majesty's interest, against Duncan M'Gregor, *alias* Drummond, in Strathyre, now prisoner in the tolbooth of Edinburgh, pannel, with the foregoing debate thereupon, they find the crimes charged against the pannel, jointly and severally, relevant to infer the pains of law; but allow the pannel to

prove all the facts and circumstances that may tend either to his exculpation, or alleviation of his guilt, and remit the pannel, with the indictment as found relevant, to the knowledge of an assize.

(Signed) CH. ARESKINE. *I. P. D.*

22d *January* 1753.

Intran.—Duncan M'Gregor, *alias* Drummond, *Pannel.*

Indicted and accused as in a former Sederunt.

The Lords proceeded to make choice of the following persons to pass upon the assize of the pannel: viz.—

William Moffat, Glass Grinder in Edinburgh.
Adam Anderson, Portioner there.
John Bell, baker there.
Alexander Crawford, baker there.
William Fettes, merchant there.
Mungo Scott, glazier there.
John Mowbray, wright there.
James Lindon, wig-maker there.
William Hodge, baker there.
Thomas Clarkson, baker there.
Alexander Wilson, painter there.
George Hogg, brewer there.
John Manners, dyer there.
John Anderson, merchant there.
George Aitken, smith there.

The above Assize having been lawfully sworn, and no objections made, His Majesty's advocate for proof adduced the witnesses following: viz.—

Thomas Blair, brewer in Gartmore, who depones, That on the 8th day of December 1750, Ronald Campbell, *alias* M'Gregor, mentioned in the indictment, came to the deponent's house, and desired him to go to the Chapel Arrack to speak with James Drummond, *alias* M'Gregor his brother, who had some business with him: That accordingly he went there, and met with the said James Drummond and his brother Robert; when the said Robert told him it was he who had sent for him, and not his brother James, and that he had an appointment that night with a young woman who lived upon the water of Enrick, in order to be married; and the night being dark, desired him to go along with him, as being best acquainted with the road. He then told him, that the lady's name was Jean Key at Edinbelly, and this he did in presence of his brother James: That accordingly he went along with the said James, Robert, and Ronald, and seven other persons who were then present, of whom the pannel was one: That he observed Robert and James had broad swords, and that Robert had a pistol; and that he saw no other arms among them, except one M'Gregor in Strathyre, who had a dirk: That some of them had great coats upon them, so that whether they had arms which he could not see, he cannot take upon him to say: That he does not remember the pannel had a great-coat upon him, nor did he see any arms about him: That they went to Edinbelly, and came there, but cannot be positive at what hour, but only it was dark before they left Chapel Arrack: That about a furlong they alighted from

their horses, and James or Robert ordered the deponent and Duncan M'Callum to attend the horses, and to be ready at a call: And that they being accordingly called, by the time they came to the said Jean Key's house of Edinbelly, she had been brought out of it, and was put upon a horse on which Robert was riding, and he observed that at first she was before him on the horse, but afterwards she was put behind; and he heard Jean Key crying out, Oh! her mother, her mother; and by her words and behaviour, he then thought she was carried away by force, and contrary to her inclination: That he heard her ask who it was that rode before her, and Robert answered it was Robert Campbell, and she replied, she was sorry he had changed his name so soon; to which he answered, he was sorry for it too, but that he would make her happy; and that Jean Key then said, she would never be happy without her mother's countenance; and Robert answered, that in a short time he would send for her. Depones, That the pannel went along with the rest of the company when they went to Jean Key's house, after alighting from their horses, and that he saw him among them; that as to the manner of setting her upon the horse, the deponent could say nothing, in regard M'Callum went before him with some of the horses, and Jean Key was on horse back before he came up, and that it was dark, and he being at a distance, could not discern who were the person or persons who put her upon the horse: That after the company left that place, about a furlong or so distant from it, Duncan Graham in Gartmore, his horse

bogged: That the deponent helped some others of the company to take the horse out of the bogg, and then parted from them and went home: That they took the road which leads towards Balfron: And depones, that when the horses were brought nearer the house upon a call, he observed the pannel was with James and Robert, and the other persons with whom he had come along. Depones, That he cannot precisely say how long it was between the time they lighted from their horses, and M'Callum and the deponent's being called to bring them up as above, but thinks it was less than an hour.

Duncan Graham, brewer in Gartmore, sworn, &c. depones, That upon Saturday the 8th of December 1750, the deponent having met with Robert Campbell *alias* M'Gregor, mentioned in the indictment, Robert desired him to go along with him to Chapel Arroch, and promised to pay him some money he was owing him: That accordingly they went to Duncan Ferguson's house there; and there Robert told him he had sent his servant to Edinbelly to bring him some intelligence about an affair he had then in hand; namely, the marrying of Jean Key, mentioned in the libel, at least of a gentlewoman living on the water of Enrich, with whom he had agreed to marry, and whom he intended to carry off, in order to their being married; and desired that the deponent might make one of his company; which he agreed to, but said he behoved first to go home, but would return again: Which accordingly he did, and came back to Chapel Arroch, where he found Robert, James, and Ronald Mac-

Gregors, and the pannel, with several others, who, with the deponent, made up the number of eleven men: That he observed there were none of them in arms except James and Robert, who had broad-swords: That severals of them had great-coats upon them, under which there might have been arms, but the deponent did not see: That he observed the pannel without his great-coat, and he is positive he had no arms: That all the said company set out from Chapel Arroch about gloaming, and went towards Edinbelly: That when they were within less than a quarter of a mile, they all alighted from their horses; and the preceding witness, and, as he thinks, one M'Callum, and some others, but is not certain, were left to take care of the horses: That the rest of the company went towards the house of Edinbelly; and the above mentioned James MacGregor and the deponent went to the house of Thomas Neilson; and after calling for a dram, James desired to speak with the landlord; and after they had been out some little time, the deponent was called for, who went straight towards the house of Jean Key at Edinbelly; and when they came to the door, the said James gave the deponent a broad-sword, desiring him to watch there, and let nobody out or in at the door: That accordingly the deponent drew the sword, and staid there: That nobody went into the house but the three brothers, James, Robert, and Ronald, and Neilson the change-keeper and the deponent himself, who stood at the kitchen door: That he did not see the pannel enter the house: That the deponent heard James call for a sight of Jean Key: That after a

little time she appeared from a closet, or some other place in the kitchen. What passed in the interim before she came out the deponent knows not; but he heard James call for her in a pretty coarse manner: That he afterwards desired to speak with her in a room by herself; and the deponent observed that she and her mother and the three brothers, James, Robert, and Ronald, went into another room, where they staid much about half an hour; the deponent, her uncle, and Thomas Neilson remaining in the kitchen in the meantime; and afterwards he observed them coming out of the room, Robert carrying the said Jean Key up in his arms from the ground, who was crying bitterly, Oh my dear mother! And from this, and her other behaviour, the deponent did not believe it was with her will, but by force she was carried of: That then James ordered the deponent to go to the main door, and to suffer none to come out of the house; where he went, and remained till the company were all gone off, except Ronald M'Gregor, who staid with him: That they two followed them; and after they were about a quarter of a mile from the house, the deponent's horse bogged, and the rest of the company helped him to pull him out; and by the time that the horse was pulled out he saw Jean Key standing upon the ground, and the pannel putting his great-coat about her; and to the best of the deponent's remembrance the aforementioned Ronald lifted her up, and put her upon the horse behind Robert; and from that they went to the house of John Leckie, near the kirk of Buchanan, where they alighted and rested themselves: That Jean Key was carried into a room there; but of her behaviour there

he knows nothing; for after some little time he was dispatched off by James to Glasgow with letters, one to one Graham a stabler at the West Port of Glasgow, and another to Glengyle's daughter; and he was then told that his errand was to bring a minister in order to marry Robert and Jean Key: That accordingly he went off,—delivered his letters at Glasgow, and brought one Mr Smith along with him, who was said to be a minister: That they came to the foresaid Leckie's house, where they found Ronald M'Gregor and the pannel, who told them, that the minister must go to Ruindennan; and accordingly Ronald, the pannel, the minister, and the deponent set out, and went for that place, which is upon the side of Lochlomond. And being interrogated for the pannel, depones, That he, the pannel, lives in a house where James Drummond, the pannel, formerly lived; and he believes, that that house and the grounds about it are part of the subject of a tack which James Drummond has there; and adds, That before he set out from Leckie's house for Glasgow, he saw the pannel with the rest of James Drummond's company there.

Thomas Key, tenant in Balquhan, depones, That his niece, the deceased Jean Key, was born about Michaelmas 1732 years, and died in October 1751 years: That she had been married to one Mr Wright, who died at Edinbelly, in the parish of Balquhan, about the middle of October 1750: That the deponent was at Edinbelly about the 8th of December said year; and that the occasion of his being there, was a message sent him by Lady Glins, to let him know that she had been in-

formed Robert Campbell, *alias* M'Gregor, had been at Edinbelly upon the Monday or Tuesday preceding, to see and pay a visit to his niece, the said Jean Key; and that he had left it in an angry mood, and threatened that he would come back again, and show himself in a another manner, and therefore desired the deponent to acquaint his niece, that she might go out of the way; and that if he, the deponent, did not do this, she would take her horse, and go do it herself: That the deponent walked to Edinbelly, being almost dark when he got there, although he got the message in the morning of that day, having some affairs of his own to dispatch at home, which detained him from going to Edinbelly sooner: That when he came to Edinbelly, he saw his niece Jean Key in company with her mother and one Annabel Mitchel; and seeing the said Annabel Mitchel was in company, the deponent therefore did not deliver the Lady Glin's message to his niece, thinking it was more proper to deliver it when she was by herself: That a little after the deponent went to Edinbelly, a man, whom the deponent took to be a Highlander, came into the kitchen, where the deponent was sitting with Jean Key, and the other two above mentioned, and one William Galbraith, who went along with the deponent; and the said man the deponent believed to be a Highlander because of his dialect, and that he had tartan hose upon him: That this man wanted to quarter there all night; but was told that nobody quartered in that house, but that there was a public-house hard-by; and the servant took him by the shoulders, put him out of

the door, and shewed him the way to the public house: That after he was gone, Jean Key told that she thought the Highlandmen were going very rife that day, for that another had been there in the morning, upon the pretence of craving money for some wood purchased by her deceased husband, though she knew there was nothing due by him on that account; for he had purchased no wood from them; and added, that she could not believe the M'Gregors would attempt any thing by force; to which the deponent added, that he did not know what they might do. Depones, That he intended to leave Edinbelly, and lodge with Mr Galbraith, his nephew, all that night; but Jean Key pressed the deponent to stay with her, as she had some business to speak with him of, particularly the discharging of the rents then due to her; to which the deponent answered, that he would first go and see what sort of a night it was, and he intended that Jean Key should go along with him to the door, in order to deliver to her the Lady Glin's message by herself alone; but when he went out to the door, and Jean Key was just at his back, he spied upon a rising ground a company of six men, upon which Jean Key returned to the house; and the deponent seeing the said company making towards the house from the east, he ran from them towards the west to a peat stack, and all of a sudden he found himself in a man's arms, who was standing there in the dark, which surprised the deponent a good deal, not knowing of any such persons being there: That this man had a big coat upon him, and a shoulder belt; and from the noise he heard below his big

that he suspected him to have arms; but the night being dark he did not see them: That this man kept the deponent in his arms, and when he was so held, the company above described surrounded him, and brought the deponent back to the door of the house of Edinbelly, and threatened the deponent to call upon some person of the house to open the door to them; and the deponent so far complied, that he called upon one John Risk, servant in the house, and told him that there were men there that wanted he should open the door to them; and this he did with a very loud voice, to let the people of the house know that it was not his intention they should open the door: That these men reproved him for making such a noise, and ordered him to speak no more; for they would make doors for themselves: However the door was at last opened; but whether it was opened from within, or pushed open from without, the deponent knows not: That the deponent was the first pushed in, and others rushed in after him: That it being dark, the deponent knew none of those who had come into the house; but after they had got into the kitchen, by the light which was there, he knew James Drummond, *alias* M'Gregor, but there was none else of the company he knew. And having now in Court looked about to the pannel, depones, he does not know him, nor does he know that he was at Edinbelly that night. Depones, That James Drummond called for a word of Jean Key; but she not appearing, he swore he would turn every thing upside down in the house, and make doors for himself, unless Jean Key was brought to him; at this time Jean Key was locked

up in a closet, of the door of which her mother had the key; but being frightened, she gave the key for some time to the deponent; but the deponent being likewise very much frightened, returned the key again to Jean Key's mother, telling her that the house was her own, and she might do with it as she thought proper; upon this the mother unlocked the closet door, and Jean Key, with her aunt Annabel Mitchell, came out of the closet; and at this time the deponent was standing with James Drummond at the kitchen fire-side. Upon James Drummond seeing Jean Key, he made a bow to her; but she said, these people do not want my person, but my money; and afterwards she came and stood by the deponent's side; and James Drummond held out his hand, to take Jean Key by the hand, which she refused to give him, saying at the same time, that they were very uncivil in coming in that manner to her house, so soon after her husband's death; James told her he wanted to speak to her in a room by herself, which she at first refused, but at last consented, upon condition that her mother and the deponent went along with her; accordingly they all four went together to another room, and three men, as the deponent thinks, of James Drummond's company came in after them; and William Galbraith, who was then at the house of Edinbelly, endeavouring to get into the said room, he was pushed back again to the kitchen by some of James Drummond's company; and when they were all got into the other room, the deponent asked of James Drummond what was his business there that night; to which James Drummond answered, that his brother Robert,

pointing to one of the company, and whom the deponent believed to be Robert, wanted to make his fortune; and some days before had come to make his addresses to Mrs Jean Key, but was refused access, though now he was resolved to make it effectual; and added, if there was any resistance, Glengyle, with 100 men, was hard at hand in the muir, whom he would call down. The deponent then replied, with a smile, that 10 men would subdue all that was there, and hoped they would allow Jean Key some few days to give her answer: But this they would not agree to; To which James Drummond answered, that another would come in and prevent them, and they were not to be unmanned in that way; and James Drummond, immediately after this, speaking in the Irish language to the three men of his company, who came into the room as above, the deponent knows not what; the three men catched hold of Jean Key, and one of them lifting her up in his arms, carried her out of the room, she crying at the same time like a woman in labour; and one of the three men pulled a pistol or dirk, and held it above the deponent's head, and said, he was a dead man if he made any resistance; and the deponent heard the said Jean Key crying and making a noise as above, while she was without the house, and the deponent believes, within cry for about a quarter of an hour; and the deponent endeavouring to go out after her, he was prevented by two men, who held two swords across the door, and a third, who held a pistol over them; or one of the two who held the swords, as above, held likewise

a pistol: That James Drummond remained with the deponent and the mother for some little time after Jean Key was carried off; and the deponent said to James Drummond, that as he had carried off the daughter, he might likewise carry away the mother; but James answered, they would send for her when they thought proper. Depones, That after this, he did not see his niece till the month of May 1751, when she was living in Mr Wightman's in the Potter-row: That they both together took a walk in the Meadows, and discoursed together concerning the usage she had met with since last he had seen her: That she then told him, that she was held up by the waist by James Drummond, until a man, unknown to her, pronounced some words, which they called a marriage, while Robert Campbell was standing by her; but that she never gave her consent. And she told him likewise, that the people she was with sometimes behaved very civilly to her, and at other times threatened her and her relations, if she and they would not come into their measures: That at this time, when they took the walk as above, two centinels were standing at Mr Wightman's door, and desired the deponent to bring back the said Jean Key, but did not attend them on their walk; and when they were on their walk, she told the deponent that she had no design of returning again to Robert Campbell. After they had finished their walk in the meadow, they walked toward the Castle-hill, and then down the high street, and she showed the deponent afterwards some house, where she had been for a night; at the same time telling the depo-

nent, when she first came to Edinburgh with James Drummond, she seldom was permitted to stay in one house for more than one night, but was always carried about from house to house, and never allowed to be in a room looking into the street: That after she left the town of Edinburgh, Jean Key went and resided in Glasgow; and about the latter end of June 1751 years, Robert M'Gregor having come to a neighbouring gentleman's house in Perthshire, a messenger was sent to the deponent to come to that gentleman's house, which he accordingly did; and when there, he saw Robert M'Gregor, who then told him that he had got a protection, and wanted that the deponent should go to Jean Key, then in Glasgow, and tell her that he would compel her by law to come and live with him, and adhere to him, but that it would cost him a great deal of expences; and for that reason, he wanted that she would do it of her own free will. That the deponent, though unwillingly, complied with it, being in part threatened if he did not: That accordingly he went to Glasgow, and asked Jean Key whether she was willing to return to Robert Campbell and live with him; but this she positively refused to do, and desired the deponent to write a letter, which he accordingly did to the said Robert Campbell or M'Gregor, to that purpose, as from the deponent, which he signed; and to the deponent's knowledge, Jean Key never saw Robert Campbell afterwards, nor went to her own house at Edinbelly: And further adds, That when he was tutor to the said Jean Key, in the year 1744 and 1745, the amount of her tutorial inventories

was betwixt 600 and 700 marks *per annum*; but in 1750 it was considerably increased, the land paying yearly about 100 merks more; and being married to one Mr Wright, she got an assignation to all the subjects he had: And further depones, That in the month of October thereafter, the deponent being sent for to a change-house in his neighbourhood, upon a Saturday, he there found James Drummond and his brother Robert, who desired him to sign a paper concerning the not prosecuting Robert and Duncan M'Gregor and their accomplices, he being the nearest heir to Jean Key; the deponent upon this told, that he wanted to take advice from some people known in matters of that kind, before he would do any such thing, in prejudice either of the government or himself; and being allowed to do this betwixt and Monday at ten o'clock, the deponent got from them a paper, which he carried to Mr Erskine of Carnock, and which paper having shewn Mr Erskine, he told the deponent after reading of it, that his signing of it could neither hurt him nor do them any service, and accordingly he came upon the Monday to the place appointed, and after having declared his willingness to sign it, they obliged him to copy it over with his hand, and sign it before witnesses, which accordingly he did: And depones, That application was made to the Court of Session for sequestrating Jean Key's estate, the same winter she was carried away from her own house, in the name of her mother and the deponent; but his name was only borrowed, and he had rather it had not been done, for fear of the

M'Gregors herrying him; but that in consequence of this application, Alexander Stevenson, writer in Glasgow, was appointed factor, and uplifted the rents accordingly.

William Galbraith, portioner of Edinbelly, depones, That he went along with Thomas Key, the preceding witness, to Jean Key's house at Edinbelly, in which house she then lived and resided, being in the parish of Balfron and shire of Stirling, upon a Saturday night, the 8th of December 1750: That some time after it was dark, the deponent heard from without the house, a confused noise of men's voices who wanted to get in, threatening at the same time, if the doors were not opened, they would make doors of their windows: That he heard Thomas Key, the preceding witness, call to John Risk, who was within the house with the deponent, to open the door, for that some men wanted to get in: That Jean Key upon this, with her aunt Annabel Mitchell, retired into a closet: That the people within being afraid, at last opened the door, and a number of people rushed into the house; but the deponent knew none of them except James Drummond and his brother Ronald; but whether the people so rushing in were armed or not, the deponent cannot tell, they having big-coats upon them; only he observed something like the crampit of a sword below the tail of James Drummond's big-coat: That James Drummond threatened, and used several blustering words in case Jean Key did not appear: That the mother being afraid, went to the closet door where

her daughter was, and called, Jeany, Jeany, come out! or some such expression: That after this Jean Key came out of the closet, and called those who had come to the house, scoundrels, or some such expression; that they wanted her money, and were very impudent to come to her house so soon after her husband's death: That upon this James Drummond answered, That it was no great matter although her husband had died but the day before, for that his brother Robert wanted a fortune, and came there to push for one; or words to that purpose: After this James Drummond desired a word of Jean Key in another room; and talking a little backwards and forwards, Jean Key, with her mother, uncle, and aunt, went into another room with James Drummond, where the deponent also went; but upon his coming into the room, James Drummond would not suffer him to stay, saying he had no business there, although Jean Key desired the deponent might stay, being her cousin-german; but James, taking him by the arms, pushed him to the door, and the deponent made no resistance: That the deponent upon this went to the kitchen, and remained there a very little space, when he heard Jean Key crying, shrieking, and making a noise; but there being men in the kitchen, hindered him from seeing what had happened to Jean Key, although he knew her voice, and heard her likewise making the same noise after she was carried out of the house; but the deponent having gone to the outer-door, through which Jean Key was carried, he saw people with swords pushing at his face; and afterwards saw two of them cross the

door with their swords, and a pistol pointing in towards the entry; and he heard Jean Key still crying as above for some time,—not quite so long as a quarter of an hour: That he likewise heard either the mother or Thomas Key say, that since they had carried away the daughter, they might likewise carry the mother alongst with her; to which he heard a voice without answer, that in a short time they would send for the mother: That after this the deponent never saw Jean Key but once at Glasgow; nor to the deponent's knowledge did ever she return again to Edinbelly: That at this time Jean Key was not twenty years of age, and that it was reckoned her fortune was worth between 16 and 18,000 merks, and that Mr Wright her husband died about six weeks before.

John Leckie, maltman at Buchanan, depones, That upon a Saturday in the month of December, 1750, the deceased Jean Key of Edinbelly came to the deponent's house, as the deponent thinks, between 10 and 11 o'clock at night, when the deponent and his family were all gone to bed: That there were in company with her, nine or ten men, or about that number, and amongst these were James, Ronald, and Robert M'Gregors, sons of the deceased Rob Roy M'Gregor, and the pannel Duncan M'Gregor: That the said Jean Key was in a very homely dress, such as he supposed she wore in her own house: That she had neither cloak nor mantle about, nor shoes upon her feet; and she had a sort of mutch upon her head, but no cap, nor any thing else about it: That she appeared to the

deponent to be sick, and in distress, by her moaning and groaning: That the deponent asked what had brought her there? To which she answered, Thir men have carried me here; adding, the M'Gregors; by which the deponent understood, that they had carried her there by force, against her will: And James M'Gregor told the deponent that she was to be married to Robert his brother: That the said Jean Key said farther to the deponent, that it had been good for her that she had never been worth a groat in the world: That they stopped in the deponent's house about an hour and a-half, or two hours; and the deponent in that time was going out and in from the company, and observed that she got some better, and eat and drunk a little. Depones, That he asked how it happened that she had no shoes; and one of the men in company answered, that her shoes had been loose, and had fallen off by the way: That the deponent did not chuse to ask too many questions, least he should have given offence, especially to that company. Depones, That before they went away, the deponent's wife lent Jean Key a hood and mantle; and they bought from his wife a pair of shoes for her, which James M'Gregor paid. Depones, That from the deponent's house they took the road towards Lochlomond; and the deponent's house is five miles from Ruindennan, and six or eight miles from Edinbelly. Depones, That before they left the deponent's house, he heard them talking of sending one to Glasgow, to get a man to marry them. Depones, That the next day being Sunday, Ronald M'Gregor and the pannel returned to the deponent's house, and after

them on the same day Duncan Graham, who had also been one of the company, upon Saturday, came to the deponent's house, as he said, from Glasgow, and brought along with him a man, who the deponent understood was to celebrate the marriage: That Ronald M'Gregor and the pannel told the deponent, as he thinks, that Jean Key and the rest of the company with her were at Ruindennan. Depones, That when Duncan Graham, and that man along with him, were come from Glasgow, Ronald M'Gregor and the pannel set out with them from the deponent's house for Ruindennan.

WILLIAM GRAHAM, merchant in Glasgow, depones, That he, in company with William Baird, maltman in Glasgow, left that place, as he thinks, upon the 5th day of January 1751 years; and having met with young Glengyle the next day, at a change-house at the burn of Ruskie, they communicated to him their intention, which was to try if they could find out the three brothers, James, Robert, and Ronald, sons of Rob Roy, and to make a proposal to them, to allow Jean Key to go to Glasgow to see her mother and friends, and stay some few days there; and to tell them, that if after that Jean Key chose to leave them and return to Robert as her husband, she should be put in possession of her papers, and every thing she had to be at her own disposal: That Glengyle said the proposal was so reasonable, that he would write a letter to them in support of it; assuring them he would take it very ill if they did not agree to it: That accordingly Glengyle wrote a letter, the contents of which the

deponent knows not, and which was dispatched to them by Glengyle's own servant, and the answer returned was, that they, the brothers, would meet Glenglye, the deponent, and Mr Baird, at the Callender of Monteith the next day, where they all met; and then William Baird made the proposal above mentioned to the three brothers themselves; and James said, for his part he was very willing she should go; but he did not believe she would incline to go, she was so fond of her husband Robert, his brother To which Mr Baird answered, that he could not think a young woman, taken away in the manner she was from her mother, whom she had not seen for four weeks, would not be willing to go to see her and her other friends. After some little squabble between James and Mr Baird, James desired him to ask the question at Jean Key herself, which Baird accordingly did; and she, after pausing a little, answered, that she would cheerfully, or gladly go to Glasgow to see her mother and her friends; and added in a little after, that she would be glad a protection could be got for the three bothers; upon which James said, that he and his brothers wanted such a protection as they might go along with Jean Key to Glasgow, and to stay with her eight days; and that Robert might wait with his wife, and call her to bed in due hours: That the deponent and Mr Baird retired into a closet of the room, to consider of the proposal James had made, and after some consultation, they returned to the company, and told they could not agree to it: That those things passed upon the 8th of January in the morning, and that

same morning the deponent had a private conversation with James, in which he told the deponent, that unless Mrs Key, the said Jean Key's mother, would withdraw the warrants which were out against them, the brothers, they would carry her directly to France, and that they were so far on their way thither. Depones, That the same morning the said Jean Key pointed to the closet of the room, as if she inclined the deponent should go into it with her, and accordingly went in, and the deponent followed her; and having shut the door, the said Jean Key again declared her willingness to go to Glasgow to see her mother and her friends, and lamenting her present fate; adding, it was needless to send out parties in quest of the brothers, because they always had intelligence of them before they came; That they were frequently interrupted during this conversation by Mr Fairfoul of Breindam: and particularly at the latter end of it, when it appeared to the deponent that Jean Key intended to say something more to him, and so they returned to the room where the rest of the company were; and that he had frequent occasion to see Jean Key after she came to Glasgow, where she died; and in the conversations he had with her, she in general accounted it as her great happiness that she had been delivered from the said three brothers.

William Baird, maltman in Glasgow, depones, That he, in company with William Graham the preceding witness, went from Glasgow in the beginning of January 1751; and next day they met with Glengyle, at a change-house upon the burn of

Ruskie, to whom they imparted their intention to have a conversation with the three sons of Rob Roy, James, Robert, and Ronald, in relation to Jean Key; and to propose to them to allow her to go to Glasgow to see her mother and her friends, and to stay with them for some days; and that if after that Jean chose to return to Robert as her husband, she should be put in possession of her papers, and all she had, with liberty to dispose upon it as she pleased: That Glengyle relished the proposal, and dispatched a letter to the brothers by his own servant, desiring them to meet the deponent, Glengyle, and Mr Graham the next day; by the answer to which, the brothers proposed to meet with them at the Callander of Monteith the next evening. And accordingly they all met there, when the deponent made the above proposal to the three brothers, who that evening said, they were very willing she should go: That in the night time the deponent heard in the next room the voice of a woman, which he took to be Jean Key's, moaning and lamenting; and when he saw her next morning she appeared to be begreetten and melancholy: That he had no oc-sion to ask her why she appeared so at that time; but after she came to Glasgow, she told the deponent, that the reason of her appearing so was, that James, the eldest brother, came into her room, after she was a-bed, and pressed her not to agree to go to Glasgow and see her mother and friends: That next morning the conversation as to the proposal was renewed; and the said James then said, that Jean would not go to Glasgow to see her mother, for that she was so

very fond of his brother Robert, her husband; but the deponent replied, that considering the way she was carried off, he, if all the clergy of Scotland were joined with him, the said James, would not believe but she would be inclined to go to Glasgow and see her mother and friends. Upon which James desired him to ask the question at herself; which he did, and she said, after fetching a deep sigh, that it was of all things what she desired most, or words to that purpose. Upon which he observed the said James make a staring look at her; and then she said, that she wished the said three brothers had a protection. And then James explained the protection that he desired to have; to wit, that he and his two brothers might go along with Jean Key to Glasgow for eight or ten days, and that Robert should have his wife to go to bed with him at night; but the deponent said, he could agree to no such protection: That at this time James said, they were resolved to carry Jean Key to France; and that they had her clothes buckled up for that purpose: That the deponent had some conversation with the said James, of the situation and danger he was then in; whereon James told him, he was in no greater danger than he was in in 1745, when he was carried in a litter before the King's army, and they were not able to touch him; and that the strength of his country and friends were able to protect him against the King and every body; or words to that purpose: That the deponent had also occasion to see Jean Key at Edinburgh, when lodged in the house of Mr Wightman by order of the Court, when she seemed to be

well satisfied, and very thankful to her friends who had delivered her from her captivity.

Thereafter, the pursuers produced the two extracts of fugitation libelled on, which the procurators for the pannel admitted as true.

Proof in Exculpation.

Compeared JOHN CAMPBELL of Kilpunt, a witness examined the 3d day of August last, in the trial of James Drummond, *alias* M'Gregor, and the deposition signed by him and Lord Minto, of that date, consisting of one page and eight lines, being judicially read over to the deponent in presence of the Court and jury, he adhered to the same, and of new declared the whole therein contained to be true. And both the prosecutor and lawyers for the pannel agree, that the former deposition be sent to the jury as part of the evidence in this trial.

ROBERT CAMPBELL of Torrie, adhered *ut supra*, with this farther addition, That Jean Key, and James Drummond, the former pannel, set out the evening of the day on which he had the conversation with them at Kilpunt's house, (as mentioned in his former deposition) for Edinburgh. And both the prosecutors and pannel hereby consent and admit the two deponents' former depositions to be sent to the jury as part of this trial.

ALEXANDER STEWART, Esq. writer to the Signet, adheres *ut supra*. And being cross-interro-

gated for the prosecutor, and the two bills of suspension, referred to in his former deposition, being shewn to him, depones, That they were refused; and that upon refusing of the second bill of suspension, an order was made by the Court of Justiciary for sequestrating the said Jean Key, and putting her under the custody of Mr Wightman, as designed in the former deposition; and after she was lodged with him, the deponent had access to see her: That upon the first and second visit, he did not think it was proper for him to ask any questions; but having heard that she began to alter, or recant what she had said to him and her lawyers, as mentioned in his deposition, he was desirous to see her by herself, lest any alteration that had appeared in her sentiments might have proceeded from the influence of her friends with whom she lodged; and for that end, having gone to wait on her, he proposed to Mr Wightman's mother, the son being then out of town, that he might have an opportunity of conversing with her by herself; but she declined this, saying, that her son was not in town, who was best acquainted with the directions he received, from the Court of Justiciary, and therefore the deponent must have patience until he returned: That some days after, the deponent, and Mr Graham, advocate, went to Mr Wightman's house, and there saw the said Jean Key, and renewed their desire of seeing her by herself: That the people that were then with her in the room, the deponent cannot with certainty say whether Mr Wightman was one of them or

not; but Mr Graham and the deponent were by them told, that if Jean Key desired it, they would have access to speak to her by herself; upon which the deponent put the question to her, and her answer then was, that there was no occasion for it. And the deponent then asked her, Whether or not she had altered her resolution of adhering? to which her answer was, That she would tell that when she was brought before the court. And both prosecutor and pannel admit the former deposition to go to the jury, alongst with this, as part of this trial.

Mr DAVID GRAHAM, advocate, adhered *ut supra*, with this further addition, That the deponent had occasion to see Jean Key in Mr Wightman's house twice or thrice, he does not remember which, after she was sequestrated in his house; but at none of these times did she discover to the deponent any desire or intention of returning to Robert Campbell. And further adds, That he did not see Jean Key in Mr Wightman's house by herself alone; not remembering that ever he asked to see her alone. And the prosecutor and the pannel agree, that this should go with the deponent's former depositions, as part of the evidence in this trial.

HUGH DRUMMOND depones, That he is an elder in the kirk of Balquhidder; and that in winter, soon after the time they heard that Jean Key and Robert M'Gregor were married, he was present when

the said Jean and Robert appeared before the minister and session, upon Sunday after sermon, in the kirk of Balquhidder; and at that time the minister put the question severally to them, Whether they were married persons or not? To which they answered, that they were. Depones, That the pannel is a sub-tenant to James Drummond; and continued to live in a house which was built by the said James, until the pannel was seized and carried to jail. And being interrogated for the prosecutor, depones, That he does not know whether either the said Jean Key or Robert M'Gregor were summoned to appear before the session as aforesaid,—his opinion was, that they came there of their own accord: Says, He does not know Jean Key; but that she answered to that name; and that the minister gave him no rebuke; nor does he remember that he said any thing to them after they had answered the above question.

Donald Ferguson, depones, That he is an elder in the parish of Balquhidder: That soon after it was reported in the country that Robert Campbell *alias* M'Gregor, was married to Jean Key, he saw the said Robert and Jean at sermon in the kirk of Balquhidder,—that is to say, he saw Robert and a gentlewoman who answered to the name of Jean Key, but whom he had never seen before, and never saw since; but that after the sermon was over, they kept their seats; and the minister coming down from the pulpit, asked the said Robert, Whether he was married to that gentlewoman or not?

and the same question he put to the gentlewoman; and they both answered, that they were married: That after this the minister said no more to them. And depones, That he knows nothing of their being summoned, but that they came there of their own will.

The Lord Justice Clerk and Commissioners of Justiciary ordain the assize to inclose immediately in this place, and to return their verdict against tomorrow, at one o'clock in the afternoon, in the old court-house, and continued the diet till that time; and ordain the haill fifteen to be then present;—each under the pains of law; and the pannel in the mean time to be carried back to prison.

23d January 1753.

Intran.—Duncan Drummond, *alias* M'Gregor, pannel, indicted and accused as in the former sederunt.

The persons who past upon the assize of the said pannel returned their verdict in presence of the said Lords; whereof the tenor follows:

At Edinburgh, the 22d day of January 1751 years—

The above assize having inclosed, made choice of John Moubray to be their chancellor, and Alexander Crawford to be their clerk; and having considered the criminal indictment pursued at the instance of William Grant of Preston Grange, Esq. His Majesty's advocate, for his Majesty's interest, against Duncan M'Gregor, *alias* Drummond, in

Strathyre in the parish of and shire of and now prisoner in the tolbooth of Edinburgh, pannel, with the Lords Justice Clerk and Commissioners of Justiciary, their interlocutor thereon, with the proof adduced for proving thereof, and proof adduced in the pannel's exculpation: They, all in one voice, find the said Duncan MacGregor *alias* Drummond, NOT GUILTY.—In witness whereof their said chancellor and clerk, in their name, have subscribed thir presents, place and date foresaid.

(Signed) JO MOWBRAY, *Chan.*
ALEX. CRAWFORD, *Clerk.*

The Lord Justice Clerk and Lords Commissioners of Justiciary, In respect of the foregoing verdict of assize, assoilzie the said Duncan M'Gregor, *alias* Drummond, *simpliciter*; and dismiss him from the bar.

(Signed) CHA. ARESKINE, *I. P. D.*

TRIAL

OF

ROBERT M'GREGOR,

BEFORE THE HIGH COURT OF JUSTICIARY, HELD AT EDINBURGH, DEC. 24, 1753.

SEDERUNT.

The Right Hon. CHARLES ARESKINE, Lord Justice Clerk,
LORD MINTO,
LORD STRICHEN,
LORD ELCHIES,
LORD DRUMMORE, and
LORD KILKERRAN.

Intran. ROBERT M'GREGOR, *alias* CAMPBELL, *alias* DRUMMOND, *alias* ROBERT OIG, Son of the deceased Robert M'Gregor, who was commonly called, and known by the name of *ROB ROY*; now prisoner in the Tolbooth of Edinburgh,—*PANNEL*:

Indicted and accused at the instance of William Grant of Prestongrange, Esq. his Majesty's Advocate for his Majesty's interest, for the crimes of Hamesucken, and the Ravishing and forcible Abduction, and carrying away of Jean Key, daughter and sole heiress of the deceased James Key, por-

tioner of Edinbelly, and relict of John Wright, lawful son of John Wright of Easter Glins; and other crimes at length mentioned in the indictment raised against him thereanent, recorded the 6th day of August last.*

Pursuers.	*Procurators in Defence.*
Mr Patrick Haldane, and Mr Alexander Home. his Majesty's Solicitors.	Mr Walter Stewart. Mr Hugh Dalrymple. Advocates.
Mr Andrew Pringle.	

The libel being openly read, and the pannel interrogated thereupon, he denied the same.

Mr Hugh Dalrymple, &c. for the pannel, alleged, that he had no particular objection to the relevancy of the libel, the same having been already twice under their Lordships' determination, in the cases of James and Duncan M'Gregors; yet he behoved to offer a few facts which he offered to prove in the pannel's exculpation; and so far was the pannel from being guilty of all, or any of the crimes charged against him in the indictment, that previous to the pretended hamesucken, forcible abduction, &c. a courtship was carried on betwixt them, the consequence of which was, that a marriage was agreed on; but as the Lady had so lately become a widow, and that decency required she should continue in that state some longer space, at the same time being apprehensive of obtaining the consent

* The indictment in the case of this pannel is in the same terms with the libel against his brother, James M'Gregor, to which the reader is referred.

of her mother and friends, they at last resolved that the pannel should carry her off with a seeming violence; which was accordingly done, and the marriage solemnized with her free will and consent; and she afterwards continued to live as his wife in great harmony, love, and amity, till she was informed that, upon the application of her friends, the Lords of Session had sequestrated the rents of her estate. Upon which she came to Edinburgh,—applied to an agent and lawyers for having the sequestration taken off,—signed two several bills of suspension for that purpose, and even acknowledged before two of their Lordships' number, that she was the pannel's lawful married wife, and was determined to adhere to him as her husband; and it was not before she was, by appointment of their Lordships, sequestrated, and free access allowed to her friends, that she departed from her former engagements: When, by undue measures and solicitations, she was prevailed upon to come and make the declarations libelled upon; which upon a proof would be contradicted in many articles, and insisted their Lordships would allow the pannel a proof at large upon the above articles.

Haldane, &c. answered, That as the relevancy of the indictment was not, and indeed could not be controverted after two repeated judgments of this Court, he would not oppose the pannel's being allowed a proof of all facts and circumstances, that might tend to exculpate him of the crimes charged against him in the indictment, or alleviate his guilt.

The Lords Justice Clerk and Commissioners of Justiciary having considered the indictment, pursued at the instance of William Grant of Prestongrange, Esq. his Majesty's Advocate for his Majesty's interest, against Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig, son of the deceased Robert M'Gregor, commonly called and known by the name of Rob Roy, now prisoner in the Tolbooth of Edinburgh, pannel, with the foregoing debate thereupon, they find the crimes charged against the pannel in the indictment, jointly and severally, relevant to infer the pains of law. But allow the pannel to prove all facts and circumstances that may tend either to his exculpation or alleviation of his guilt; and remit the pannel, with the indictment as found relevant, to the knowledge of an assize.

(Signed) CH. ARESKINE, *I. P. D.*

The Lords Justice Clerk and Commissioners of Justiciary, continue the diet against the pannel till Wednesday next, at half an hour after seven o'clock in the morning; and ordain him in the mean time to be carried back to the prison, and the haill witnesses and assizers then to attend, each under the pains of law.

Edinburgh, 26th December 1753, New Session House.—The Lord Drummore, one of the Lords Commissioners of Justiciary, continues the diet, at the instance of his Majesty's Advocate, against Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig, till to-morrow the 27th instant, at half an hour after seven o'clock in

the morning; and ordain parties, witnesses, and assizers then to attend, each under the pains of law.

27th December 1753.

Intran.—Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig,—*Pannel.*

Indicted and accused as in the former sederunt.

The Lords proceeded to make choice of the following persons to pass upon the assize of the pannel, viz.

William Wright, baxter in Edinburgh
John Mathie, weaver there.
John Brown, merchant there.
David Scott, glover there.
James Stirling, merchant there
Hugh Hathorn, merchant there.
Adam Cleghorn, merchant there
Andrew Hamilton, merchant there.
William Dempster, goldsmith there.
Alexander Inglis, brewer there.
James Allan, merchant, there.
Claud Inglis, merchant there.
William Baillie, merchant there.
John Nisbet, merchant there.
William Tod, junior, merchant there.

The above assize were all lawfully sworn, and no objection made.

The Lords Justice Clerk and Commissioners of Justiciary, fine and amerciate John Milne, founder in Edinburgh, Adam Keir, junior, baxter there

Thomas Dundas, merchant there, Robert Fairley, brewer there, and William Alexander, junior, merchant there, and each of them, in the sum of 100 merks Scots money, for not appearing this day and place, in the hour of cause, there to pass upon the assize of the said Robert Campbell, *alias* M'Gregor, *alias* Drummond, *alias* Robert Oig, pannel, as they who were lawfully cited to that effect.

(Signed) CH. ARESKINE, *I. P. D.*

Thereafter his Majesty's Advocate-depute proceeded to the proof of the indictment, and

The procurators for the pannel admitted, that the two fugitations libelled on, the one dated the 16th day of July 1736, and the other dated the 25th day of May 1751 years, both pronounced against the pannel, are fair and genuine, conform to the extracts produced, and alike as if sworn to by the clerk of Court and other witnesses in presence of the jury. And further admit, that the two declarations libelled on, as emitted by Jean Key, bearing date the 20th day of May, and 4th of June 1752 years, having a signature on the back thereof, dated the 3d day of August 1752 years, signed by Robert Leith, clerk of Court, and the Lord Justice-Clerk, are voluntarily and freely given and emitted by the said Jean Key

(Signed) ROBERT CAMPBELL.
WALTER STEWART.
CH. ARESKINE, I. P. D.

The Advocate-Depute likewise admitted, That two bills of suspension, signed by Jean Key and

Alexander Stewart, writer to the signet; one dated the 5th and the other the 18th days of March 1751 years, were truly signed by the said Jean Key and Alexander Stewart, and afterwards presented to the Lords of Council and Session, and both produced in the clerk's hands.

(Signed) PAT. HALDANE, *A. D.*
CH. ARESKINE, *I. P. D.*

Thereafter the above two declarations, emitted by Jean Key, were judicially read in presence of the Court and Jury.—[For these declarations see the trial of James M'Gregor.]

Thomas Neilson, tenant in Edinbelly, married, aged 50 years, depones, That in the month of December 1750, the deceased Jean Key was carried off from the house of Edinbelly upon the 8th day of that month: That on Monday before that day, two people came to the deponent's house, which is a change-house, and of whom John M'Ewan, messenger, was one, who was an acquaintance of the deponent's before that time; and the other a Highland gentleman, whom he did not then know, but now sees him, the pannel, Robert M'Gregor. Depones, That after they drank some ale and whisky, John M'Ewan carried the deponent along with him to the house where the said Jean Key lived, which was very near the deponent's; and when they came there, M'Ewan desired that he might go in and ask of Jean Key whether she would allow the said M'Ewan to come and wait on her; and accordingly the deponent, having gone into the house and seen the said Jean Key, and delivered his message, she

asked him if there was any body with him, to which the deponent replied, there was a Highland gentleman; to which she returned this answer, that he, Mr M'Ewan, would be very welcome to pay her a visit, but she desired to see no company with him. Depones, That having returned to John M'Ewan, he reported the answer of his message, upon which John M'Ewan went in to Jean Key's house: The deponent having gone home, and in a little while after, M'Ewan returned to Robert M'Gregor, who was still in the deponent's house, and they two, M'Ewan and Robert Campbell, went out together to a dyke-side, and soon after came back to the house, paid the reckoning, and went off. And being interrogated at what time of the day they went away, depones, He cannot be positive of the precise time, but thinks it was about one o'clock. Depones, That upon a Saturday of the foresaid month of December, about eight o'clock at night, some people came to the deponent's house, of whom he knew one, Duncan Graham in Gartmore, and another James M'Gregor, the pannel's brother, and there was a third whom he did not know, and these three entered the house: Whether there was more company abroad belonging to them he did not know; but after they had drunk some drams, they desired the deponent might go along to show them the way to the water of Enrick, that they might be put upon the road to the Bridge of Gaunachan: That James M'Gregor laid hold of the deponent, and partly carried him under his arm, though he was willing enough to go, till they came to Mrs Wright's house, that is Jean Key's house,

and then the deponent was desired to call at the door, which he twice refused to do; but the third time the said James M'Gregor swore he would do it, if there was breath in his body; but after some discourse upon this subject, they heard a voice, when the said James M'Gregor, believing him not to be a Highlandman, asked him whom he was; and the deponent answered, that he was a friend of the house; upon which the said James M'Gregor let him go. Depones, That he the deponent knew the voice to be Thomas Key's voice, who was Jean Key's uncle, and had been in the house that night; and having come to the door, upon what occasion the deponent knows not, had been catched by some of a party about the house. Depones, That the said James M'Gregor had desired Thomas Key to call to have the door opened; and after some discourse between them, which the deponent does not remember, the said Thomas Key called very loud to one Thomas Risk, who was within the house, to open: And after some space, the door being opened, they hurried in, and Thomas Key was carried in with them, and the deponent was also pushed in at the door. Depones, That they went then into the kitchen, and the deponent was along with them; and the pannel was also there; and that James M'Gregor, his brother, asked for Jean Key; to which her mother and uncle answered, that she was not in the house; but the said James said she was in the house, and they behoved to see her; at the same time telling them, she would be used discreetly: That this was insisted on several times, and James said, he would see her positively; but he does not

remember that there were any threats to break open doors, or any swearing: That at last the mother brought the said Jean Key out of a closet, where she had been hiding herself, into the kitchen; and then James said, they behoved to have a private word with her; and to which her mother answered, that that they should not have; upon which James told her, that they must have it, but would use her discreetly: And after some discourse of this kind, at last the said Jean Key said, She would not go, unless her uncle was with her, who was to her a parent; upon which James said, with all his heart: And the mother going to light a candle to carry them to another room, the deponent assisted her, and took the candle into his hand, and desired to know from her where he should carry it; and she directed him to go to the west room, where he entered and put the candle into a candlestick; and then was ordered to go out of the room, for he had no business there. Depones, That there went into that room, James M'Gregor, his brother, the pannel, and a third man, whom the deponent did not know; as also Jean Key, her mother, and aunt, and Thomas Key, her uncle. Depones, That William Galbraith went also into the room, but was turned back: That the door was put to; and that there were Highlandmen in the kitchen and trance: That within a short space after they went into the wester room, the deponent heard the said Jean Key cry excessively, and so bitterly, that she could not have cried more if they had been tearing her, but uttered no words: And immediately thereafter, she

was carried out of the door: That they remained there, a considerable space before the horses were brought; and all that time she continued crying in that manner; and even after they went off, they heard her cries at a distance. Depones, That some of the people that were with her in the house, and the deponent among them, intended to go their ways; but when they came to the door, found there were two men with drawn swords, who ordered them to remain within the house, and nothing should harm them; but if they did come out, they should be dead men. And being interrogate, Whether Jean Key's mother remained in her own house from the Monday preceding to the Saturday, when the said Jean Key was carried off? depones, That he is a door neighbour; and as far as he knows, or was informed, she neither dined nor lay abroad during all that space. And being interrogate for the pannel, depones, That when he, the deponent, went, as above related, to deliver the message from M'Ewan, he saw the mother go into a cellar, but was not present when Jean Key gave the answer: That in the cellar she might have heard what past; but whether she did or not, he cannot be positive. Depones, That he never heard of any previous courtship betwixt the pannel and Jean Key; nor did he know upon what occasion the friends were met upon the foresaid Saturday in Jean Key's house. Depones, That as he has above said, the pannel was in the house; yet he never heard him speak, nor saw him do any thing.

Thomas Neilson, son to Thomas Neilson, the

preceding witness, depones, That upon Monday, immediately preceding the Saturday that Jean Key was carried away from her house of Edinbelly, which was in the end of the year 1750, John M'Ewan, messenger, and Robert Campbell, whom he now sees at the bar, came to the house of Thomas Nielson, the preceding witness, and the deponent's father; and at that time John M'Ewan went to the house of Jean Key, which is not above ten yards distant, or thereabouts, from the deponent's father's house; and having in a short space thereafter returned, Robert Campbell and he retired a little bit before the door, and had some conversation: That the deponent was standing in his father's hall door at that time, but could not distinctly hear what passed between them, only heard M'Ewan say, that he could not get something; and the pannel answered that—By God he would do something; but what it was he could not tell: That after this some short space, M'Ewan and Robert Campbell went away about sun setting, and the deponent went along with Robert Campbell a part of the way northward, as far as his father's head dyke, upon the edge of the muir, which was distant about a quarter of a mile, and there pointed out to him the road to Bucklivie. Depones, That upon the Saturday when Jean Key was carried off, three men came to his father's house after day light falling, which the deponent thinks was about seven or eight o'clock at night; one of the men he knew, namely Duncan Graham in Gartmore. When they came in, they told his father, after drinking some drams, that they wanted to be shown the road to the wa-

ter of Enrich, and he behoved to put on his shoes and show them the road · That his father accordingly did go along with them, and as two of them were utter strangers to the deponent, he was anxious to see where they were going. But as he came to the door to go out, two men stopt him who had something in their hands, but it was so dark he could not see what it was, and desired him to stay in; for if he offered to come out they would pistol him. Some time after this the deponenet opened the door of his father's house, and desired the two men to come in; because, as their intention was to keep him in the house, neither he nor any of the family could get out at that time. Upon which they came into the house; and soon thereafter the deponent and others heard Jean Key's shrieks and cries; and the deponent knew her voice, the distance being so small, as is above mentioned: That the two men allowed him to go about two ells from the door, but would allow him to go no farther; and there they heard her cries: That the sound lessened, the deponent apprehends, as she was carried farther from them. And farther depones, That from the Monday to the Saturday evening in that week, when the said Jean Key was carried away, the mother was not any where abroad above an hour or so, except possibly it might have been upon the Saturday, when he saw her in the morning and in the evening at home; but the deponent having been himself from home about the middle of the day, he can say nothing as to that from his own knowledge.

John Risk, indweller in the Clachan of Fintrac,

depones, That some time in the beginning of December 1750 years, being upon the Monday immediately preceding the Saturday that Jean Key was carried away from her own house, the deponent saw John M'Ewan, the messenger, with the pannel, ride by towards a public house in the neighbourhood of Jean Key's: That soon thereafter, the above John M'Ewan came to her house, and desired leave for a gentleman to come and wait upon her; but as the deponent had just before told Jean Key that he had seen the pannel in the neighbourhood of her house, she answered John M'Ewan, that she would admit of no such visits: That upon Saturday night following, about the gloaming, a stranger came to Jean Key's house, asking for quarters, but being told that none were quartered there, the deponent went along with him to the neighbouring public house; from whence he had not been long returned to Jean Key's house, till Thomas Key, the said Jean's uncle, having gone out a little, the deponent heard some noise and bustle; and immediately upon that went and shut the door; the deponent having heard before that Jean Key was under some apprehension of being carried off, and also heard her uncle Thomas Key say, that it was resolved she should go to Glasgow for her greater security: That soon after the deponent had shut the door, some people without called to him to open it, and if refused, they would break it up, and bring down Glengyle and his men upon them from the muir: That upon the above Thomas Key's calling to the deponent, he opened the door; and then the said Thomas Key, the pannel, and his

brother James, came into the house: That one of them had something like a sword under his great coat; that more of the party came into the house, but he knew no more than those above named; severals of them remained without doors: That James M'Gregor, as soon as he got in, not seeing Jean Key, who had retired to a closet, said, he behoved to see her, and wanted to speak to her. Her friends at first answered, that she was not in the house; James answered, he knew she was, and behoved to see her: Upon which she was brought into the room where he was; and she having asked what business they had with her? James said, they wanted to speak privately with her in the next room; but she refused to go, unless her mother and uncle were allowed to be with her. Accordingly, the said James, with her mother, uncle, and aunt, retired to another room, and the pannel followed: That they had not been long there, till he heard Jean Key crying out, and that by her cries she seemed to be going out of the house, as he still heard her crying after she was without doors; and she cried bitterly, though the deponent could not distinguish what she said: That the deponent endeavouring to go out to see what was the matter, was hindered by two armed men, who threatened to kill him if he offered to stir: That after she had been gone some little time, the deponent got out, and following westward the way she had gone, two men desired him to go and fetch her her cloak and cap: That upon the deponent's telling them he would do so, and go along with her, they immediately ordered him back, and threatened to pistol

him if he returned to them: That John Wright, Jean Key's husband, died about six weeks before she was carried away: That Edinbelly is in the sheriffdom of Stirling, and parish of Balfron: That from the Monday preceding the Saturday on which Jean Key was carried off, her mother was always at home; only he can say nothing as to the Saturday at noon, he having been absent then himself; only he is sure she was at home the morning and evening of that day. And being interrogate for the pannel, depones, that he himself did not hear John M'Ewan ask leave for a stranger to visit the heiress of Edinbelly; but understood that he had so asked leave, having heard Jean Key's mother answer, that they would admit of no such visits, and does not know whether Jean Key was present at that time or not. And depones, that it was Jean Key's friends who he heard were apprehensive of her being carried off, and never heard herself say so. Depones, That while the pannel was in Jean Key's house, he did not see him do any rude or violent thing.

Thomas Key, tenant in Balquhan, depones, That the deceased Jean Key of Edinbelly, was born in the month of October 1732 years: That her husband, Mr Wright, died in October 1750, at Edinbelly, in the shire of Stirling, and parish of Balfron. Depones, That when he was curator to the said Jean Key, her yearly income, betwixt land and money, was betwixt 600 and 700 merks; and that he knows it was better the time of her death. Depones, That the Lady Glins,

who lives in the neighbourhood of Edinbelly, upon the morning of that Saturday on which Jean Key was carried away, sent a message to the deponent, acquainting the deponent, that she had been told that the pannel, some time before, had been at Edinbelly, and wanted to see Jean Key; but having been refused admittance, he had gone off in a passion, uttering some threats: That she, the Lady Glins, therefore desired the deponent should go and acquaint the said Jean Key with the same; and advised her to provide for her safety, by going out of the way for some time: That accordingly he went to Edinbelly upon the said Saturday; and a little after he had gone there, it being then dark, a man, whom the deponent believed to be a Highlander, came into the kitchen and asked for quarters that night; but being told he could not lodge there, John Risk, the preceding witness, went and shewed him the way to a neighbouring public house. When he was gone, Jean Key observed, that the Highlanders were very rife about the house that day; for that on the same morning another had been there on pretence of seeking the payment of some wood due by her deceased husband; though, as far as she knew, he had bought none. She added at the same time, that she hoped she had nothing to fear from the M'Gregors, as they were then entirely subdued by the laws; but the deponent answered, he could not tell what they would do: That the deponent, intending to deliver Lady Glin's message to Jean Key, went to the door, and she followed him; but he was no sooner out, than some men came about him, one of whom

laid hold of him: That these men had great coats about them; under which the deponent heard what he believed to be the clattering of arms: That there seemed to be six or seven of them: That Jean Key, upon this, retired into her house in a fright, upon which the door was shut: That then the said men and the deponent came to the door of the house; and they, in a threatening manner, ordered him to call to the people within to open the door; and accordingly the deponent called with a loud voice to John Risk, the preceding witness, and told him, that there were some men without that wanted to get in: That James, the pannel's brother, ordered him to call no more at them; and if they did not open, they would make doors themselves. A little after this the door was opened, and the deponent was thrust in first, and was followed by severals of these men, of whom the deponent then knew but James M'Gregor; but upon seeing the pannel some time thereafter, and recollecting the faces of those men who came into the house at that time, he thinks the pannel was one of them: That upon their coming into the kitchen, James, the pannel's brother, asked where Jean Key was; for as he knew her to be in the house, he would see her, and threatened to turn every thing in the house upside down if she was not produced: That upon these threats, Jean Key's mother went and opened a back closet in which she was locked up, and brought her out to the company: That Jean Key asked what their business was with her; and blamed them for troubling the house at that time of night, for she

knew it was her money, and not herself they wanted. James M'Gregor asked a word of her to another room; but she refusing to go without her mother and uncle, the said James M'Gregor, with three other men, and Jean Key, her mother, and the deponent her uncle, retired to another room; and when they had been there a little, James, pointing to one of the men present, said, There is my brother Robert, a young fellow who wants to make his fortune: That he came here to visit Jean Key some days ago for that purpose, and to make his addresses to her; but being then refused admittance, he had now returned to make the thing effectual: That Jean Key, who seemed to be in terror, returned no answer; but the deponent said, I hope you will allow her some time to make her answer; No time, said James, for then we may be prevented, and another may come in the mean time and disappoint us: That he would not be unmanned in this affair; and that if any offered to make resistance, he would immediately call down Glengyle, who lay up in the muir with 100 men: And then, having said something pretty loud in Irish, which the deponent did not understand, three of the men seized upon Jean Key, and lifted her from the ground, her head being over one of their shoulders, and her feet being as high as her head; at the same time, one of the men held a dirk over the deponent's head, and told him, if he offered to interpose he was a dead man: That when Jean Key was lifted up as above, she cried out bitterly, struggled as much as she could, and endeavoured to lay hold of the deponent for relief;

and in this manner, crying and struggling, she was carried off from the house: That when she was in the inner room, there were men who guarded the door, and refused access to every body: That so soon as she was carried out of the house, two men guarded the door, one of them having a drawn sword in his hand, and the other with a drawn sword and a pistol, and would suffer nobody to go out; for when the deponent attempted to go out he was forced back: And that he still heard her cries, as they were forcing her away, as long as the distance would allow him. Depones, That the first time he saw Jean Key after her being so carried off, was about the middle of May following, in the house of Mr Wightman, in the Potter-row: That she complained to the deponent, that she had been for a long time hurried up and down in the Highlands to several different places, by those people who carried her off, who sometimes used her well, and sometimes used her ill; and till such time as she had got to Mr Wightman's, James, the pannel's brother, kept her in Edinburgh, carrying her from house to house, not suffering her to lodge two nights in one place, nor allowing her to look from a window: That when the pretended marriage was celebrated at Ruindennan, in the Highlands, James, the pannel's brother, held her by the middle, while one, who called himself Smith, said some words over them, and then declared them married persons; but she said nothing, nor gave any consent, only called Smith a scoundrel; which name, he said, he did not deserve: That thereafter, the said James and two women got her

into a room with them, pulled off her clothes, flung her into bed, and then put in Robert to her; and said, she had not slept for two nights before. A letter, of date the 4th of December 1750, marked by the Lord Examinator and David Graham, being shewn to the deponent, and he interrogate for the pannel, depones, That the said Jean Key told the deponent, that it was some days after she was carried off, before the men that carried her off knew that she could write: That when they discovered that she could write, they laid the scroll of a letter before her which they had made up, and obliged her to copy it over with her own hand, and add her name to it; and a date, which was some days prior to her being carried off, though it was really wrote of a date some days posterior: That she told him, as he can remember, that this letter imported, that he should come and carry her off; but cannot be distinct as to the particular expressions.

John M'Ewan, messenger in Cardross, being interrogated, Whether he received any threats or menaces touching his giving evidence in this case? Depones, That in the month of July last Mr Campbell of Killpunt, who lives in the deponent's near neighbourhood, came to his house and shewed the deponent a letter, for which he said he had paid two shillings postage, and which concerned the deponent: And being shewn a letter, signed John Stirling, addressed to the said Mr Campbell, and dated at Dunkirk, the 30th day of

June 1753 years, depones, It is the same letter. That Mr Campbell and the deponent both agreed in opinion that the letter was from James Drummond, *alias* M'Gregor, the pannel's brother; and as the deponent has had sometimes occasion to see James Drummond's hand writing, he thinks the hand writing of that letter is like it. Depones, That upon Sunday, the 2d day of December 1750, the prisoner came to his house and stopped all night, and next day carried the deponent along with him to a neighbouring gentleman's house, where he had some business; and after they had gone from thence, he told the deponent he had some design of making his compliments to Jean Key, now deceased, and desired that the deponent would go along with him: That the deponent told him he thought it would not do; however, the deponent agreed to go along with him, and they went forward to the house of Thomas Neilson, a former witness in this cause, and sent Thomas Neilson to Mrs Key, the mother of Jean Key, with a message from the deponent, that he was there, and intended to wait upon her: And Neilson having brought back an answer, that the deponent would be welcome, the deponent went thither and told Jean Key, and also her mother, that he had left a gentleman, one Mr Campbell, at Thomas Neilson's, who wanted to make his compliments to Mrs Wright, meaning the said Jean Key; and both of them asked the deponent, whether that gentleman was a married man or not? and he told them that he was not married, but was a widower: Upon which Jean Key first spoke, and said she had troubles in her former

marriage, being married very young, and but lately a widow; and fell a weeping, and begged of him to tell that gentleman, or any other unmarried man, that he should forbear talking on that subject; that it would be year over year before Jean Key would listen to any thing of that sort: That the deponent himself was affected with having occasioned her shedding tears; and therefore left them and returned to Thomas Neilson's, and carried out the pannel and reported his answer, and begged of him to proceed no farther in the matter; and they soon after parted, and the pannel went away, carrying Thomas Neilson's son alongst with him through the muir. Depones, That at this time the pannel did not tell the deponent that he had had any former acquaintance of Jean Key. Depones, That the pannel has been once or twice at the deponent's house since Jean Key was carried off; and at one or other of these times, he told the deponent that before she was carried off, he had once seen her at a seceding meeting-house at Edinbelly, but never mentioned his having seen her on any other occasion; and the letter above mentioned is marked by the deponent and the Lord Examinator.

Thomas Blair, brewer in Gartmore, depones, That the night of the 8th of December 1750 years, Ronald M'Gregor, the pannel's brother, came to the deponent's house, and desired him to come and speak with his brother James, who was then at Chappel Arrock: That accordingly he went, and found there the pannel and his brother James: That the pannel told the

deponent, it was he that wanted him, not his brother; and that he had an appointment that night with a young woman who lived upon the water of Enrick, to marry her, and wanted the deponent to go along, as he knew the road, as the night was dark; and that he told the deponent the lady's name was Jean Key, who lived at Edinbelly. Depones, That the pannel whispered what is above to the deponent in private; and that there were in the company in all at that time about 11 persons: That the pannel had a sword and a pistol, and his brother James had the same; and that this was all the arms he observed in the company, except Malcolm M'Gregor, who had a durk: That accordingly the deponent went along with the pannel his brother James, and the rest of the company, until they came within a furlong or two of the house of Edinbelly, where they all alighted from their horses; and they desired the deponent, with one M'Callum, to keep there horses there, and be ready at a call: That the number of horses in all were ten: That this they did, and in less than an hour's time they were called upon; and he and M'Callum carried up the horses to the house of Edinbelly, where he saw the pannel, his two brothers, and the rest of the company about the house, and Jean Key with them: That Robert the pannel, mounted his horse, and that Jean Key was put on before him by some of the company, but, to the best of his knowledge, not laid across the horse; and he heard Jean Key calling out, Oh! my mother! from which expression and behaviour, he believed Jean Key was forced away; and Robert the pannel, said to her, be easy, I'll send for your mother, and I'll make you happy;

she said she would never be happy without her mother's countenance: That he heard Jean Key asking the pannel who it was that was carrying her away; to which the pannel made answer, that it was Robert Campbell; and Jean Key said she was sorry that he had changed his name so soon; and the pannel said that he was sorry for that too: That the pannel rode about a furlong and a half with Jean Key before him, when Duncan Graham's horse was bogged; and that while he was helping to take the said horse out of the bogg, he saw some of the company take Jean Key from off the horse before the pannel; but this, upon recollection, he is not certain of, but is sure he saw some person put on Jean Key behind the pannel; and this is all he knows of the matter, for he went no further alongst with them.

James Leckie, maltman at Buchanan kirk, depones, That upon the 8th of December 1750 years, about eleven o'clock at night, the pannel, with his brothers James and Ronald, and six or seven more men in company, came to the deponent's house along with the deceased Jean Key, who to the deponent appeared to be in a very melancholy condition: That the deponent asked the said Jean Key what brought her there? and she answered, That the M'Gregors had done it, and that they wanted to marry her to the pannel; and the deponent at that time believed, from the condition that she appeared to be in, that it was altogether contrary to her inclination; for she said too that it would be happy

for her if she had not a groat in the world: That the deponent afterwards had a conversation with James M'Gregor; who told the deponent, that he designed to marry the said Jean Key to his brother Robert;—and that the company remained in his house about an hour and a half; but before they left it Jean Key ate and drank a little, and seemed to be a little more composed before she left his house than what she was when she first came there: That the deponent was told by the M'Gregors that they intended to carry Jean Key the length of Ruindennan, which is on Lochlomond side, and about six miles from the deponent's; and Edinbelly is about as far from the deponent's house. And being interrogated for the pannel, depones, That he heard the deceased Jean Key tell his wife, that if she was to be carried away, she wished that they had taken her clothes with her, which were tied up in a bundle, and not carry her away like a beggar; and that his wife gave her a cloak, a cap, and a pair of shoes to put on her; which shoes were afterwards paid for by James M'Gregor, the pannel's brother, and the cloak and cap were returned.

Annabel Mitchel, relict of John Fairlie, portioner of Arnfinlay, depones, That upon the 8th of December 1750 years, she came to Edinbelly to pay a visit to her sister Mrs Key, and Jean Key her daughter: That soon after she came, they had a conversation together, in which Jean Key told her, that Robert Campbell, the pannel, had sent a message that he was coming to see her; but that she had absolutely refused to see him, or admit him to

her house: That the same night the pannel, his brother James, and his brother Ronald, with several others; the said three brothers, each of them armed, got into the house of Edinbelly; but the deponent and Jean Key having concealed themselves in a closet in the kitchen, she heard the said James enquire for the said Jean Key, and swear that he would see her that night: That thereafter, the said Jean Key and she having come out of the closet, James told Jean Key, that he wanted to speak to her by herself; but she desired her mother and uncle, Thomas Key, might be present; upon which James, the said Jean, her uncle, and mother, went into a room by themselves; and after staying a short while in it, first the pannel came out, and went out at the door and took his horse, and immediately thereafter, a man to her unknown, brought out Jean Key out of the chamber in his arms, screaming and crying out, and carried her towards the door; but by the way she catched hold of the deponent, and kept her hold till she was separated from her by some of the men, and carried out and set upon horse-back, and carried away; and she heard the shrieks and cries of the said Jean Key after she left the house; from all which she concluded, that she was violently forced away: That next day, at the desire of her sister Mrs Key, she went over to Buchanan to see Jean Key; and being come there, she was told, that she was carried to Ruindennan, on the side of Lochlomond; whither she repaired, attended by Benjamin Dounie, her son-in-law, and James Ure, a tenant of the said Jean Key's: That that night, or next morning, she

had some conversation with her said niece; in which she acquainted her, the deponent, that they, that is the three brothers above mentioned, had married her to the pannel; but that it was against her will that she was in such condition: That she was not able to stand during the ceremony, and was supported by James the pannel's brother, and some others: And declared to the deponent, that they had cruelly treated her; and she shewed to the deponent a blue mark upon her right arm, from the shoulder down to the elbow. And the said Jean was in a very sickly condition the time she was there, and mourned and lamented for her misfortune: That the deponent was informed by the said Jean Key, that they had been married on the Monday morning, and that she had been put to bed immediately after; and on the evening of that day, she saw the said Jean's clothes taken off by two women, and her put in bed; and afterwards saw the pannel go to his naked bed with her; but the deponent was so much affected with the sight, that she immediately retired: That on Tuesday morning thereafter, while she and her niece were conversing together, they came and told her to make haste, for the boat was ready; upon which, after hurrying over breakfast, the said Jean Key walked down to the boat, to which she was carried by two men, to prevent her feet from being wet: That during some of the conversation she had with her niece at Ruindennan, she told the deponent that her stays were rent, and that she could not subsist without other stays and some clothes; and that it appeared to the deponent that the stays had been

rent in the side by violence. Depones, That her niece said nothing to her of any bundle she had packed up in the house of Edinbelly; nor did she see any bundle in it after her return from Ruindennan, although she stayed at Edinbelly for three weeks thereafter; but as her niece had given her keys when she was in the said closet, before she was carried off from Edinbelly, she told her what place she would get riding clothes in, where she would find her pinners, and where she would find her ribbons, all in different places, which she desired might be sent to her; and the deponent found them in the places exactly described, and accordingly sent them to her. And depones, That when she and her niece were in the closet above mentioned, the said Jean Key appeared to her to be in the greatest terror and confusion; and said, Oh, what would she do now; there they were come. And depones, That she made the above mentioned visit, partly with a view to acquaint her niece Jean Key, that it was rumoured in the country that the M'Gregors were coming to carry her off from her own house, and to advise her to go to Glasgow to her friends, where she would be out of their power; to which Jean replied, that she had something to do about the house, but so soon as that was done she would do so. And further depones, That the said Jean Key told her, that the way she got the hurt on the right arm above mentioned, was when she was carried to the door of her house; some of the company said, If she would not ride behind him, the pannel would lay her on across before him on the tore of the saddle; which was accordingly

done; but after being so carried for a short space, she said she was not able to endure it; and that now she would rather chuse to ride behind any of them.

WILLIAM BAIRD, maltman in Glasgow, depones, That being possessed of a warrant to apprehend the pannel and his two brothers, James and Ronald, for violently assaulting and carrying off Jean Key, he, in company with one Mr Graham, merchant in Glasgow, set out from thence about the beginning of the year 1751; and by the way having met with M'Gregor of Glengyle, younger, they acquainted him that they were to meet with the said three brothers; at least, they wanted to see them to make them the following proposal—that they should allow Jean Key to go to Glasgow to see her friends, and to leave her at full liberty there for some time; and if she pleased to return to the pannel as her husband, that she should be at liberty to do so: That Glengyle having relished the proposal, said he would write to James Drummond, or some others of the brothers to that effect, and to acquaint them that he thought the proposal a fair one, and what they ought to comply with: That accordingly he did write such a letter; the deponent having first given his parole that the warrant should not be put in execution, if the brothers agreed to meet him and Mr Graham, forty-eight hours after they should part. Glengyle's servant, who went with the letter, brought back for answer, that the two brothers should meet him and Mr Graham at the Callander of Monteith next day, And they

having met accordingly, the deponent renewed the said proposal to the brothers; but James said, that though he approved of the proposal himself, he did not believe Jean Key would agree to go to Glasgow and leave her husband, but that he would endeavour to persuade her to do so. But next morning the said James acquainted him, that the said Jean Key would not go to Glasgow, and that the other two brothers were then in the room. Depones, That he answered, that Jean Key had always been a dutiful child, and he could not think that she could be so cruel as to refuse to go and see her afflicted mother; after which some words passed betwixt him, the deponent, and the said James Drummond, who having desired the deponent to ask herself, which he accordingly did; and her answer was, that it was what she earnestly desired above all things. Then James gave her a broad look; and she then said she would be very willing that the three brothers had a protection: Upon which James said, that he would not let her go to Glasgow, unless he and his brothers got a protection, that they might go to Glasgow and stay there with safety, and that Robert, the pannel, should have his wife at night: But the deponent said, that that was such a protection that he could neither give, nor would grant. Depones, That he had no private conversation with Jean Key himself, but believes Mr Graham his companion had; for Jean Key and he went into a closet together; but were interrupted by Mr Fairfowl of Breandam, his knocking at the door, which they opened, and desired to have a little more time; but in a few minutes he knocked

again, and so they came out; and soon thereafter the deponent and Mr Graham left the brothers, and set out for Glasgow; but he hoped Glengyle would bring her along; but he was soon disappointed, Glengyle having come up with him alone on the road. Depones, That these things happened in John M'Nab's house in Callender: That in the night time Mr Graham, his companion, having told him that he heard a woman weeping in the next room, he asked the deponent if he had heard it; and upon listening, he did hear the voice of a woman moaning and lamenting; and they agreed in supposing that it was Jean Key: And when the deponent had afterwards occasion to see the said Jean Key at Glasgow, she then told the deponent, being asked by him, that it was she; and that the reason of it was, that James, the pannel's brother, had come into her room at night, after she was a-bed, and pressed and threatened her not to go to Glasgow to see her friends: And being interrogated for the pannel, depones, That while in M'Nab's house he had a private conversation with the pannel; in which having asked him why he would not allow Jean Key to go to Glasgow? his answer in substance was, That she liked him so well she would not leave him. Upon which the deponent observed to the pannel, Then it seems she likes you better than you like her; for you have left her since you got her. To which the pannel answered, That it was very true that he had left her for a night and a half. Well, said the deponent, you may allow her for that to go and see her mother at Glasgow for two or three nights. The pannel

rejoined, You know I am a trading man, and owing debts in the country; and to allow her to go, would break my credit in the country. To which the deponent answered, Whether do you value your credit or your neck most? And upon that the pannel said, For God's sake take her with you; but for all that they did not allow her to go.

William Graham, merchant in Glasgow, depones, That upon the 5th of January 1751, he went along with William Baird, the preceding witness, to the Highlands, on purpose to apprehend the pannel and his two brothers, for the violent abduction of Jean Key, William Baird having a warrant for that effect: That on their way they met with young Glengyle, to whom they did not communicate their errand; but told him their purpose was to try if the pannel and his brothers would consent to Jean Key's going to Glasgow, to see her mother and other friends; and if, after conversing with her mother and other friends, she was willing to return to the Highlands, she would have her free leave: To which Glengyle answered, that the proposal was so extremely rational, that if he saw them he would be very angry if they did not comply with it; and proposed to write a letter to them to come and have an interview with the deponent and Mr Baird upon that subject; but upon this condition, that Mr Baird, who had the warrant, should give his parole, that though they should not agree, they should not be troubled for 48 hours after they parted; That accordingly, Mr Baird having given his parole to that effect, Glengyle wrote a letter to

them, and sent it by his servant, proposing that they should come the next day to the burn of Rousky, and bring Jean Key along with them: That the servant returned with their answer, that they did not incline to come to the burn of Rouskie, but that they would come to the Callendar of Monteith, which is a little farther up the country. Accordingly they did come, and brought Jean Key alongst with them; and having met in the house of one M'Nab in Callender, Mr Baird repeated the proposal he had made to Glengyle, that they would allow Jean Key to go to Glasgow to see her mother and friends; and that after conversing with them, if she was willing to return to the Highlands, she would have her full liberty; To which the pannel's brother James answered, that she was so fond of the pannel her husband, that he doubted her inclination to leave him and go to Glasgow. And some difference happening between the said James and Mr Baird upon their several sentiments upon that subject, James then said, Ask herself; which Mr Baird having accordingly done, she answered, that she would chearfully and willingly go; but after pausing a little, and appearing in some fright and concern, she said she wished the three brothers had a protection. Upon which some conversation happened upon the nature of the protection that was proposed. Mr Baird said, they should have a protection in their own country; but James said that that was what he did not want; and the protection he meant, was a protection for them while in Glasgow; and with this express quality, that while there, the pannel, his brother, whom he call-

ed husband to Jean Key, should have freedom to go to bed with his wife at regular hours; on which, after Mr Baird and the deponent had consulted a little, they answered, that such protection was what they neither could nor would grant. And depones, That he understood the very proposal of a protection of that nature to be a flat denial of allowing Jean Key to go to Glasgow. Depones, That they all staid in M'Nab's house that night: That in the night time the deponent overheard the voice of a woman weeping and moaning; of which having acquainted Mr Baird his bed fellow, he likewise heard it; and though they did not certainly at the time know who the woman was, yet they did suspect it to be Jean Key; and when they saw Jean Key the next morning, she had the appearance of one that had been in much distress the night before; and that some time after Jean Key was at liberty, she told Mr Baird, as Mr Baird told the deponent, that it was she whom they had heard weeping that night in M'Nab's house; and gave this reason for it, that James Drummond, the pannel's brother, had come into her room the night before, while she was in bed, and had with threats, discharged her going to Glasgow. And being interrogated, depones, That when Jean Key found her going to Glasgow was disappointed, she went into a closet of the room and beckoned to the deponent to follow her, and having got James Drummond's allowance, she went into the closet, and seemed to have had something to say to him, more than there was time; for Mr Fairfowl of Breandam having, by frequent tirling at the door, interrupted them, so that they were al-

lowed but a few minutes together; but in that time, short as it was, she exceedingly lamented her hard fate, and said she would willingly go and see her mother, and that she would again try to see if they would allow her: That after this James applied to the deponent to interpose his good offices with the mother to withdraw her complaint and the warrants thereupon; and bade him tell, that if she did not, the young folks would go to France; that they were so far on their way, and that their clothes were all put up for that purpose, and they would appoint a factor for uplifting the rents of the subjects: To which the deponent made this answer, That he would not undertake to interpose with the mother, unless her daughter was allowed to go to Glasgow. Depones, That he had frequent occasion of seeing Jean Key after she was at Glasgow; and though he cannot recollect particulars, yet this he remembers, that she expressed great satisfaction at being relieved from the hands of these people who had detained her in the Highlands.—After reading over the deposition to the witness, having observed that, as his deposition is marked, it would appear that he had said, that all the conversation that happened in M'Nab's house, in relation to Jean Key's going to Glasgow, was in the evening of the day that the pannel and his brother came to Callendar; whereas, in fact, he meant to say, that much of that conversation happened in the morning of the day following. And being interrogate for the pannel, Whether the pannel did not express his willingness that Jean Key should go to

Glasgow? depones, That he had no particular conversation with the pannel upon that subject; but that the pannel was present at the conversation about it above mentioned.

Mary Russell, relict of Robert Inglis, writer in Edinburgh depones, That the deceased Jean Key came to the deponent's house by order of the Court of Justiciary, as the deponent thinks, upon the 18th of March 1751, and remained there till the 5th or 6th day of June thereafter: That when she came first there, the deponent observed her in some disorder, both with respect to her health and judgment: That she appeared to be confused; and the deponent observed her frequently, even in company, muttering to herself: That she was not altogether recovered of her health all the time she staid in the deponent's house; and it was a good many days before she recovered her judgment: That about the beginning of April, the deponent went out of the town for ten or twelve days, and when she returned, thought her a great deal better in her judgment. and did not observe that habit of speaking to herself that she had when she first came: That the deponent imputed the disorder in her judgment to the terror she had been in: Depones, That while she staid in the deponent's house, several people called for her, and the method used was, that after enquiring their names, she was acquainted of it, and such as she desired to see were admitted, and all others refused access to her: That in particular, Alexander Stewart, writer to the Signet, was several times with her; but one

day John Wightman the deponent's son, having gone out of town, he directed the deponent, as she understood him, that when any person was admitted to see her, the deponent should be present: That after he was gone, Mr Stewart having called, the deponent told him he might see Jean Key, but that the deponent behoved to be present; and he having asked the deponent if she had her son's orders for that? She answered she had: whereupon Mr Stewart, after staying a little, went away, and said he behoved to have that redressed; but before he left the house, he called upon the deponent, and told her, that Jean Key's friends were playing the fool; for that Mr Campbell was a very good match, and said many fine things in his favour; to which the deponent made no other answer than that the subject was never spoke of; but when he, Mr Stewart, was present. Depones, That after Mr Wightman, the deponent's son, returned home, the deponent informed him of what had happened; and her son said, that she had mistaken his orders, for that Mr Stewart should have access to converse with her alone: And accordingly Mr Stewart was acquainted of the mistake, and ever after had access to see her alone as often as he pleased. Depones, That while Mrs Wright was at the deponent's house, the said Mr Stewart writer, and Mr David Grahame Advocate, came to Jean Key, and asked her what she was minded to do? To which she answered, that she would tell the Lords that when she came before them; To which Mr Stewart replied, You may hang these men; but remember, you will hang your own husband, for all the ministers in Scotland cannot disannul the marriage; for you have owned

it to several people, particularly at my house to my wife, and Mrs Grahame. To which she replied, that it might be so; but she was not then at liberty: With which reply Mr Stewart was not satisfied, but insisted with her farther: Upon which the deponent said, that she thought it hard he should urge her so much, when none of her lawyers or writers were present with her; but Mr Grahame said, he was satisfied it was not proper for them to advise their clients, meaning the pannel and his brothers, to appear at the circuit at Perth. Depones, That while Mrs Key staid in the deponent's house, neither the deponent nor any of her family, to her knowledge, gave any advice to her not to return to, or adhere to Robert Campbell, the pannel, as her husband; which was left altogether to her own free choice. Depones, That while in the deponent's house, she went frequently out to the meadow, and other places, and twice to Corstorphine, once a foot, and another time in a chaise: That commonly when she went out from the deponent's house, some of the family went along with her, but when at Corstorphine, where the deponent's daughter had a room, she went out sometimes to walk by herself, as the deponent's daughter told her. And depones, That Jean Key might have made her escape, if she had been so minded, from the deponent's house; but that she never showed the smallest inclination that way. Depones, That Jean Key is now dead, and thinks her death happened in October 1751.

Katharine Inglis, daughter of the deceased Robert Inglis, writer in Edinburgh, depones, That

Jean Key, by order of the Court of Justiciary, as the deponent believes, was sequestrate in her mother, the preceding witness's house, about the 18th day of March 1751 years: That the deponent was not acquainted with her before that time, but was very well acquainted with her while she remained there: That the said Jean, when she first came to her mother's house as above, appeared to the deponent not to be perfectly sound in her mind and judgment; for that she had odd gestures, and frequently spoke to herself, and appeared to be in such a condition, that the deponent was afraid to stay in a room with her by herself: But that some considerable time before the said Jean Key left the deponent's mother's house, she appeared to be quite recovered, as she had none of these symptoms: That during the whole time she remained in the said house, there was never access refused to any person who called upon her, the said Jean Key, excepting some persons that she absolutely refused to see, and once that Alexander Stewart, writer to the Signet, called at her mother's house, and told he wanted to see Jean Key, but was refused access, as Mr Wightman her brother was not at home: But upon his coming to town, and being told that Mr Stewart was calling to see Jean Key, and that he did not get access to her, Mr Wightman said it was a fault, and he would go and acquaint Mr Stewart that he might come when he pleased, and he should get admittance, which he accordingly did; and the deponent afterwards saw Mr David Græme, Advocate, and the said Mr Stewart, writer to the Signet, come, who both got admittance to her. Depones, That Jean Key remained in her

mother's house till about the 5th of June 1571; and during the whole time she remained there, the deponent did not in the least suspect that Jean Key had the least inclination or intention to make her escape and return back to Robert Campbell her supposed husband; for had she been so minded, she might have easily done it many a time; for she was noways confined, but was allowed to go abroad by herself whenever she had a mind. Depones, That she had frequent conversation with Jean Key concerning the treatment she had met with from the time she was carried from Edinbelly, till the time she was brought to the deponent's mother's house; and that Jean Key told her she was forcibly carried away from Edinbelly, and put upon a horse; but after riding some little of the way, she threw herself from the horse, and hurt herself; that thereafter she was put behind Robert the pannel, who was so moved with her pitiful cries and lamentations, that he consented to let her go and return home again to Edinbelly; but that James, his brother, came up to him with a pistol in his hand, and swore, and said, God damn you for a cowardly rascal and scoundrel: What! would he let her away, when he ventured his life and family to procure him a fortune: That they rode on to a change house at Buchanan, and from thence to Lochlomond side, where she, the said Jean Key, was forced to celebrate a marriage with the said Robert Campbell, by James, the pannel's brother, who forced her to celebrate a marriage with the said Robert Campbell, as said is, by forcing her from the place she was sitting in, before a man whom they procured as a minister: That James, when

he so forced her, took her by the right arm, and forced open her right hand, having one arm about her middle; and in this manner did he present her before the minister to his brother Robert: That there was two women in the house, who assisted James in what he then did: That the deponent did not incline to hear more of the matter; but Jean Key said to the deponent, that she suffered more than any woman ever had suffered; or had been used in such a way as never a woman before had been used in; but which of these two expressions the said Jean Key used, the deponent does not now remember; but she then added, that the world should never know the bad treatment or usage she had met with from these M'Gregors. And the deponent has heard Jean Key say, that if it should ever be her fate to see any of them, it would be her death, or kill her: That having had occasion to be in the same bed with Jean Key, two or three nights before she left her mother's house, and after they were both disposed to sleep, the deponent was frequently disturbed from sleeping, by Jean Key's complaints of the misfortunes that she had met with, and praying for resignation to live under them: That the deponent being frequently interrupted from sleeping by these complaints, she at last asked Jean Key what she meant by these complaints, and that she was sorry to see her so unhappy; to which Jean Key answered, that she had never known happiness, and could not know it now: That the only thing that made her easy was the thoughts of her not living long, as her constitution and her heart were both broke; but there was one thing she had reason to be thankful

for, and which she was even obliged to the M'Gregors for, which was their preventing her from putting an end to herself, which she had attempted; but that now she had time to make her peace with God for what crimes she had been guilty of, though she knew of none that deserved such a punishment as she had met with And further, the deponent heard Jean Key say, that James M'Gregor and Robert deserved to die a thousand, or ten thousand deaths for what they had done to her; but she would not wish any life were taken on her account: That Jean Key appeared to the deponent to be of a modest and gentle behaviour, and of a lively and chearful spirit; and seemed to want to brave her misfortunes, and conceal them from the world. And further depones, That while Jean Key remained in the deponent's mother's house, there were two sentries placed at the door for the said Jean Key's safety and protection from without, but not to hinder her when she had a mind to go abroad, or to hinder any person from seeing the said Jean Key, whom she inclined to see: And that Jean Key died upon the 4th day of October 1751.

The pursuer renounced all further probation.

Thereafter the Advocate Depute, in name of the pursuer, and Mr Walter Stewart, advocate, in name of the pannel, judicially consented and agreed that the depositions of the several witnesses after deponing in the exculpation, and which had been formerly taken in the trial of James Drummond, the pannel's brother in this Court, should be read

~~Key, both mentioned in his former depositio~~
over to them at deponing of new in this trial, and if adhered to, that the said depositions should be sent to the jury as part of the evidence in this present trial.

Compeared, HENRY HOME of Kames, Esq. one of the senators of the College of Justice, who adhered to his former deposition; and being interrogate for the prosecutor, Whether or not, after the 18th day of March 1751, when Jean Key was sequestrate in the house of Mr Wightman of Mausley, he continued to give her his assistance as a lawyer? Depones, That having heard that after she got in among her own friends and was under their protection, she told her story in a very different manner from what she had done to him; that therefore he declined to be thereafter any further concerned in her affairs.

Compeared Mr DAVID GRÆME, Advocate; and the deposition emitted by him in the trial of James Drummond *alias* M'Gregor, in August 1752 years, with the other deposition also emitted by him in the trial of Duncan M'Gregor in January thereafter, being read over to him in presence of the jury, he adheres to the same.

Compeared ALEXANDER STEWART, clerk to the Signet; and the deposition emitted by him in August 1752, in the trial of James Drummond, with the other deposition also emitted by him in the trial of Duncan Drummond, *alias* M'Gregor, in January thereafter, being read over to him in presence of the jury, he adheres to the same. And

the two bills of suspension signed by him and Jean Leing also read in presence of the jury, and shewn to him, he declares, They are the same referred to in his former deposition.

DONALD M'INTYRE, indweller in Edinburgh, who adhered to his former deposition; and being interrogate for the prosecutor, depones, That he had no house of his own in the town of Edinburgh at the time he carried the letter from the pannel to Jean Key, mentioned in his former oath: That he has a son in the poors-house, who was admitted there about three years ago by the manager there upon the deponent's application; and that he had a house in James's Court Whitsunday was a year; in which all the goods he had were about that time consumed by fire: That his house belonged to Adam Murray, baxter: That one Thomson, an upholsterer, was his next neighbour; and that their houses were only separate by a thin deal partition; but he did not hear of any harm any of his neighbours got, except that Thomson's birds were smothered in their cages by the smoke that came through the partition.

PATRICK MURRAY, goldsmith in Leith, who adhered to his former deposition; and being interrogate on the part of the pannel, depones, That he visited Jean Key several times after she went to Mr Wightman's house; and particularly about ten or twelve days after, when she told him, that it was needless for her to adhere to the pannel; for that she could not do him any service, or save his life, for he would be hanged for murder.

GILBERT M'ALPINE of Blairvokie adhered to his former deposition.

AGNES M'ALPINE, spouse to Alexander M'Coll, late at Ruendennan, adhered to her former deposition. And further deponed, That Jean Key only leaned down on the bed on Sunday and took a nap, and was in bed with no body from the time she came to the deponent's house, till such time as she and the deponent were put to bed together.

HUGH DRUMMOND and DONALD FERGUSSON, Elders of the parish of Balquidder, adhered to their former depositions.

ANDREW M'GIBBON, tenant at Dykehead of Cardross, depones, That being a relation of the said Jean Key, he went in the end of January, or February 1751, to a place called Torrie, where he heard the pannel and Jean Key then were, in order to pay a visit to the said Jean Key his relation; and having got Jean Key to take a walk with him in the fields with other two women, the deponent asked how she was, and whether she intended to adhere to Robert Campbell as her husband; and she answered, that she was pretty well; what could she now do, but adhere to him since she was married. Then the deponent asked her whether she inclined to see her mother? and she answered, that she would be very glad to see her, but that she wished she would not be so lavish in throwing away her money, and laying out expences;—which the deponent understood she meant in procuring

warrants to apprehend the M'Gregors, though she mentioned nothing of it. And the deponent having heard a report that she was kept in confinement, asked her whether it was so or not; to which she answered, that she was not kept in such confinement but she might get away, but had never attempted it; and she also told the deponent, that she at first was carried away by force, and against her will; but that now she could not say but she was civily enough used by those who carried her away. Depones, That at the time the deponent saw Jean Key as above, she appeared to the deponent to be cheerful enough. And being interrogate for the prosecutor, depones, That he got a message that very day from James Drummond, in presence of the pannel and other two gentlemen, to deliver to Jean Key's mother, who was then at Glasgow, importing that Jean Key would very willingly see her mother; and if her mother would consent to come to the head of the water of Enrick, Jean Key would be there sent to meet her alongst with a gentleman and servant, and the two gentleman then present told they should bail, there would not be a M'Gregor within five miles of her: That Jean Key was very pressing with the deponent to undertake this office, which the deponent at length did; and accordingly went to Glasgow and delivered the above message to Jean Key's mother; but the mother made answer to him, if the daughter inclined to see her she must come to Glasgow.

Kenneth Tulloch, writer in Edinburgh, interrogate, and the deposition formerly emitted by

him in the trial of James Drummond *alias* M'Gregor, in August 1752 years, part of the record of this Court, being read over to him, the deponent, in presence of the Court and Jury, adhered to the same.

Thereafter the proof for the Pannel being concluded,

The Lords Justice Clerk, and Commissioners of Justiciary, ordain the Assize to inclose immediately in this place, and to return their verdict against Saturday, the 29th instant, at ten o'clock forenoon; and ordain the haill fifteen to be then present, each under the pains of law, and the pannel to be carried back to prison.

29th December 1753.

Intran —Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig, pannel.

Indicted and accused as in the former sederunt.

The persons who passed upon the assize of the said pannel, returned their verdict in presence of the saids Lords, and whereof the tenor follows:—

At Edinburgh, the 28th day of December 1753 *years.*

The above assize having inclosed, and having made choice of Hugh Hawthorn, merchant in Edinburgh, to be their Chancellor, and Adam Cleghorn, merchant there, to be their Clerk; and having considered the indictment pursued at the instance of William Grant of Prestongrange, Esq. his Majes-

ty's Advocate, for his Majesty's interest, against Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig, pannel, son of the deceased Robert M'Gregor, commonly called and known by the name of Robert Roy, with the Lords Justice Clerk and Commissioners of Justiciary their interlocutor thereupon; together with the proof adduced for proving thereof, and proof adduced in the pannel's exculpation,—they all in one voice *find*, That the Pannel is *GUILTY*, art and part, of entering with other lawless people armed, the house of Edinbelly, which belonged to the deceased Jean Key, designed in the indictment, in which she and family then dwelt; and in a forcible and hostile manner, within the said house, did attack, invade, and lay violent hands upon the person of the said Jean Key, and did carry her out and away from the said house. In witness whereof their said Chancellor, and Clerk in their name, have subscribed thir presents, place and date foresaid, upon this and the two preceding pages.

(Signed) HUGH HAWTHORN, *Clerk.*
ADAM CLEGHORN, *Chan.*

The Lords Justice Clerk and Commissioners of Justiciary having considered the foregoing verdict of assize, returned against Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig, pannel; they, in respect thereof by the mouth of James Alexander, dempster of Court, decern and adjudge the said Robert M'Gregor, *alias* Campbell, *alias* Drummond, *alias* Robert Oig, to be carried from the bar, back to the tolbooth of Edinburgh, there

there to remain till Wednesday, the 6th day of February next to come; and upon the said day to be taken from the said tolbooth to the Grassmarket of Edinburgh, and there, betwixt the hours of two and four o'clock of the said day, to be hanged by the neck by the common hangman upon a gibbet, until he be dead; and ordain all his moveable goods and gear to be escheat and inbrought to his Majesty's use, which is pronounced for doom.

(Signed) CHA. ARESKINE.
GILB. ELLIOT.
ALEX. FRASER.
HEW DALRYMPEL.
JA. FERGUSON.

The following account of the Execution of Robert M'Gregor, *is taken from the Caledonian Mercury 17th February* 1754.

Yesterday Robert Campbell, *alias* M'Gregor, *alias* Rob Roy, was executed in the Grassmarket, pursuant to his sentence, for the forcible carrying away of the deceased Mrs Jean Key, the heiress of Edinbelly. He was very genteelly dressed, read on a volume of Gother's works from the prison to the place of execution, and for a considerable time on the scaffold. He behaved with great decency, and declared he died an unworthy member of the Church of Rome.' And further said, That he attributed all his misfortunes to his swerving two or three years ago from that Communion; acknowledged the violent methods he had used to obtain Mrs Key, for which he has been condemned; and hoped that his suffering would put an end to the farther prosecution of his brother James Drummond, for the part he acted in that affair. His body, after hanging about half an hour, was cut down and delivered over to his friends, which they put into a coffin and conveyed away to the Highlands.

APPENDIX.

INFORMATION

FOR

HIS MAJESTY'S ADVOCATE; *Pursuer;*

AGAINST

JAMES M'GREGOR, *alias* DRUMMOND, *alias* JAMES MORE, *Pannel.*

THE information for the Crown begins by enumerating the various crimes charged in the indictment. After which it proceeds in the following manner:—That from the facts thus charged, containing a continued and complicated scene of wickedness of the most crying nature, various or different crimes were included; even as in England, if a man shall enter the house of another in the night time, and at the same time steal goods out of the house, he will be at once guilty of burglary and felony. And if any man should be so wicked as to ravish his own sister, the wife of another man, he would at once be guilty of rape, incest, and adultery; and if he should do this in Scotland, and enter the house of her husband for that purpose, he would also be guilty of hamesucken: So in the present case, the crimes charged in the major proposition of the judgment, as committed by, or contained in, the facts above recited, are,

First, Hamesucken, or the violent entering into any person's house without licence, or contrary to the King's peace, or seeking or assaulting him or her there, where he or she was dwelling at the time, and lying and rising nightly and daily.

Secondly, The ravishing of women, or the forcible abduction, or violent carrying a woman from one place to another, with intention either to violate her person against her will, or to force her to a marriage.

Thirdly, The causing a marriage, or the form thereof, forcibly, and by concussion, to be celebrated as betwixt a man and a woman.

Fourthly, Under pretence of such forced marriage, the violating her person, without the free consent and against the will of such woman.

To all which is added the peculiar aggravations of these crimes that occur in the present case; namely, that the same were committed against a woman, a minor, a widow, lately became such, and an heiress; and when the man so forced upon her for a pretended husband, and who afterwards violated her person upon that pretence, was of a character, circumstance, and situation, utterly unbecoming or unfit for her, as being destitute of fortune, substance, or good fame, and reputed guilty of, or outlawed for the most heinous crimes.

The same libel, according to custom, gives notice to the pannel of certain pieces of written evidence that were to be used against him in his trial, viz. *Primo,* Extract sentence of fugitation pronounced in the Circuit Court of Justiciary, held at Perth, 25th May 1751, against the pannel and his said two brothers above named, and five others their accomplices, for their not appearing to stand trial for the foresaid crimes whereof he is now accused.

Secondly. Extract of the sentence of fugitation pronounced by this Court on the 16th July 1736, against the said Robert, the pannel's brother, for not appearing to stand his trial for the murder of the deceased John M'Laren.

From this extract it appears, that the now pannel James M'Gregor, was at the same time indicted for accession to the said murder, and for thefts and other offences libelled; as to the first of which this Court, by their interlocutor of the 21st July 1736, "Sustained the defence proponed for the pannel James Drummond, *alias* M'Gregor, that at the time foresaid he was *alibi,* at about 40 miles distant from the place where the crime now charged to have been committed, and for aggravation of their guilt in respect of all or any of the thefts libelled against the said James or Ronald Drummonds, *alias* M'Gregors, sustained it relevant that they were habite and repute common thieves."

And by the verdict of the assize, returned the 4th August 1736, "They find it was not proven that the pannels, or either of them, were guilty, art and part, of the murder of the deceased John M'Laran, or of the houghing and wounding the cattle libelled, and that none of the particular acts of theft mentioned in the libel were proven; but did find it proven, that James and Ronald Drummonds, *alias* M'Gregors, pannels, were reputed to be thieves in the country."

Whereupon this Court "ordained the said James and Ronald Drummonds to find caution and surety, acted in the Books of Adjournal, each of them under the penalty of £200 sterling for their good and peaceable behaviour, for the space of seven years after the date thereof, and ordained them to remain in the custody of the macers of Court until they find caution, as said is; and upon their finding the said caution, ordained them to be set at liberty."

Thirdly, The libel refers to the principal, or original judicial exa-

mination or declaration of the said Jean Key now deceased, taken and emitted by her, and subscribed by her hand, in presence of the Lord Justice Clerk and Lord Drummore, on the 20th of May 1751, and thereafter judicially renewed and adhered to by her; and a farther declaration made by her, in the High Court of Justiciary at Edinburgh, on the 4th day of June 1751.

And *Fourthly*, as one piece or kind of evidence, for proving that a pretended marriage was celebrated betwixt the said Robert, the now pannel's brother, and the said Jean Key, reference is made to two bills of suspension offered in the name of the said Jean Key, and of the said Robert, wherein he is designed her husband, complaining of an order or deliverance of the Court of Session, of date the 13th of February, 1751, proceeding upon the petition of Janet Mitchell the mother, and Thomas Key, the uncle of the said Jean Key; and thereupon appointing Alexander Stevenson, writer in Glasgow, to be factor upon the estate and effects of the said Jean Key; one of which bills of suspension was refused by the Lord Minto, upon the 5th of March, and the other was refused by the Lord Drummore, after advising with the Lords Justice Clerk and Elchies, on the 18th March 1751; in both which bills the now pannel James acted as agent, solicitor, or manager, by employing, informing, or directing the writer and lawyer, who were advised with about the same, and in both which bills the pannel caused a tale to be told, or an account of the facts to be given by the said Jean Key, who then still remained under the pannel's power or influence, which account was contrary to the truth of the case known to the pannel and to her, and was by her, the said Jean Key, thereafter disavowed, disclaimed, and denied at her examination above mentioned, in presence of the Lords and Court of Justiciary.

All the writings or extracts so referred to in the libel are therein mentioned to be lodged in the hands of the clerk of this Court, so as the pannel might have access to see the same; and as some of these writings were, in the debate on the relevancy, founded upon by the pannel's counsel, as the foundation and proof of his defence, being the bills of suspension above mentioned, signed by Jean Key; and other of the said writings were objected to for the pannels, as not being competent to be produced by way of evidence against him before a jury, namely, the judicial declarations of Jean Key herself now deceased, which were taken in this Court, and on which question the Court directed the counsel on both sides, to argue in their respective informations; it becomes impracticable to speak intelligibly upon these points, without opening briefly the substance of these other writings, which therefore the pursuer shall now proceed to state in their order, consisting of the former proceedings in the Court of Session or Justiciary, that were had on either side, in consequence of the facts charged in the libel, or indictment above recited.

On the 12th February 1751, a petition was presented to the Court of Session by Janet Mitchell, relict of the deceased James Key, portioner of Edinbelly, and Thomas Key, tenant in Boquhan, brother to the said deceased James Key, (that is, by the mother,

and by the father's brother of the said Jean Key, or by the nearest relations in life on the father or mother's side,) which petition sets forth, that the said James Key died in the year 1744, leaving only one child, Jean Key, then about 12 years of age, and an estate in land which he had purchased a few years before for the sum of £1500 sterling, and of moveables in money and stocking on his estate, which he possessed and laboured himself, to the value of £500. That Jean Key (the heiress of this fortune) had been married about two years before the date of that application, to John Wright, younger of Easter Glins, who had died in October then last 1750, leaving no child; and in the night of the 8th December thereafter, James M'Gregor, *alias* Drummond, in Invervorick, Ronald M'Gregor *alias* Campbell at Balquhidder Kirk, and Robert M'Gregor *alias* Campbell, their brother, all three sons of Robert M'Gregor, *alias* Rob Roy, came accompanied with eight other lawless persons, their accomplices, all armed with pistols, broad swords and durks, under cloud of night, to the house of the said Jean Key the widow. Then the petition proceeds to recite many of the facts above charged in the indictment, and for evidence thereof, refers to a precognition of witnesses who had been present at committing many of these facts which had been taken on the 30th January preceding by William Bryce, Sheriff-substitute of Stirlingshire, and transmitted by him with a presentment of the criminals, in order to their being brought to trial at the next Circuit Court of Justiciary, a full copy of which precognition was to the said petition annexed: And the petition farther representing, that the said Jean Key was still detained in miserable captivity, notwithstanding of several attempts made by her friends, with the assistance of parties of his Majesty's forces to relieve her. And that in the meantime no body had power to manage her affairs, or to take up any of her money, or apply it for her relief, or for bringing the above heinous criminals to justice. And "therefore praying their Lordships to appoint Alexander Stevenson, writer in Glasgow, or any other fit person, finding sufficient caution in terms of the act of sederunt of the 13th February 1730, to be factor on the estate and effects of the said Jean Key, with power to apply out of the same the necessary sums for recovering her out of captivity, and for bringing the said Robert M'Gregor, and his brothers and accomplices to justice."

On the 13th February 1751, the prayer of this petition was granted by the Court of Session, and Alexander Stevenson, the person therein named, appointed factor on the estate and effects of the said Jean Key, with all the powers craved in the prayer of the petition.

It appears that this sequestration proved somewhat galling to Robert M'Gregor and his friends, who had forcibly carried off the person of Jean Key from her own house, and still detained her, with intent to get the said Robert to be possessed of her estate; whereupon they found it necessary, as it was not convenient, for Robert M'Gregor himself, the pretended husband, to repair to Edinburgh, to send thither Jean Key herself, accompanied by the

now pannel James M'Gregor, to endeavour to get that sequestration removed, which it was in vain otherways to hope for, than by getting Jean Key herself to disclaim or disavow the application made on her behalf by her mother and her uncle, and to deny the facts set forth in that application.

Accordingly, on the 5th of March 1751, when the Court of Session was not sitting, a bill of suspension, signed by the said Jean Key herself, together with a writer to the signet, was presented to the Lord Minto, Ordinary on the bills for the time, praying a suspension of the said factory granted to Alexander Stevenson upon her estate, on the 13th of February preceding, in which bill she is made to say, "That she was neither carried of, nor detained against her will, nor under any kind of captivity; that previous to the 8th December, Robert Campbell had been introduced and made his addresses to her; and after repeated visits, she at last told him that she had no other objection to the match but the want of her mother's consent, and that it was too soon after the death of her first husband. That Mr Campbell told her he was resolved to carry her off, and as she did not seem much averse to it, he accordingly came, upon the 8th December 1750, to her own house, with his brothers and some of his friends, and carried her away with some appearance of violence, which she was not very much displeased with, as in some measure it excused her for marrying so soon after her husband's death, and without her mother's consent. That on Monday following, being the 10th of December, she was willingly and formally married to Mr Campbell, in presence of several witnesses, men and women, and resolved to live dutifully and decently with him as her lawful husband: That the said factory ought to be suspended, as there was not the least evidence to be brought of her captivity; and she was now ready to appear before their Lordships in Court, to show she was under no force, constraint, or influence."

This first bill of suspension was refused by the Lord Minto Ordinary, on the 5th March 1751, and on the 18th of the same month a second bill of suspension was offered, also signed by Jean Key and her writer, again representing the same facts, and urging the same arguments as in the former bill for obtaining a suspension to be past of the factory, as having been granted without calling or hearing her the proprietor; who being now ready to appear in person, and to insist for the possession of her own estate, the factory granted by reason of her supposed captivity could no longer subsist.

This second bill was presented to the Lord Drummore, Ordinary on the bills, and was by his Lordship also refused on the same 18th March 1751, after he had advised with the Lord Justice Clerk and Elchies; who, as well as himself and the Lord Minto, were Lords of this Court of Justiciary, as well as of the Court of Session.

Here it may be observed in passing, that pinched as they were by the said factory, it was a very bold attempt in the now pannel and his friends to bring Jean Key in person to Edinburgh, and to make her subscribe such representation of the state of her case and to offer to appear in a court of justice to show that she was un-

der no force, constraint, or influence. Such an offer was in reality one most signal effect of the extreme terror, constraint, and influence, under which, even at Edinburgh, in this month of March 1751, the now pannel being there along with her, she still continued to be subject.

On the same 18th day of March 1751, when this second bill of suspension was refused, the same three judges, the Lords Justice Clerk, Drummore, and Elchies, were properly met in a Court of Justiciary, and caused the said Jean Key to be brought before them, where being examined, " She acknowledged that she had been with the persons against whom the warrants had been granted on her account; and that she was, upon the Monday after she was taken away, married with the said Robert M'Gregor, *alias* Drummond, by one who signed his name Smith; and that she inclined to adhere to the marriage."

" Whereupon the said Lords, on consideration of the whole circumstances of this case, and in regard the said Robert Drummond stands fugitated (or outlawed) in the book of adjournal, upon a libel against him for murder, and that neither he nor any of his accomplices have appeared in public, but seem to lurk and abscond in order to evade justice: as also that it is apparent, from the precognition produced, that her being carried off was begun *vi et armis*, and that there is danger that impressions may yet remain with the said Jean Key, and that it is reasonable she should be lodged and sequestrated in some proper house, where her friends and relations might have access, that she might be at liberty to determine with herself what is proper to be done in an event which is of so great consequence to her; they ordained the said Jean Key to be carried to the house of John Wightman of Maulslie, in the Potter-row, near Edinburgh, where she is to remain and be entertained by him until the 4th day of June next, unless the Court shall order her to be set quite at liberty before that time; and ordained the said John Wightman to allow access to her mother, friends, relations, and doers, but to such only as she pleases to admit, or chuses to speak with, that they may have free liberty to converse with her, but so as not to admit numbers of persons together: And he is to take care that the said Jean Key be neither forcibly taken away from his house, nor allowed to go from it without the order and consent of the Court; and for that purpose the said Lords recommended to the Magistrates of Edinburgh to grant their assistance for making the present directions effectual; and, for that end, to give commands for setting sentinels at the said house, and take such other precautions for which they should see cause."

The wisdom and the justice of this judicial order, made on a summary cognition and uncommon occasion, appeared from the event; for upon the 20th May 1751, the said Jean Key was again brought before the Lords Justice Clerk and Drummore; and having now had leisure to recover from her fright and to compose herself, she emitted a declaration of that date, to which she thereafter judicially adhered before the Court of Justiciary, upon the 4th of June following, and emitted likewise a farther declaration.

[The declarations of Jean Key are here quoted at length as recited in the account of the trial.]

The end of this sequestration of the said Jean Key being now over, which was to give her opportunity to recover herself,—and so much courage and spirit, when she should find herself at peace and safety, under protection of lawful authority, that she might be at liberty to declare the truth of what had befallen her in time past, and to take and declare her resolution how she was to dispose of herself in time coming; and whether now, that she had the liberty of election, she would chuse to adhere to Robert MacGregor as a husband, who had so long detained her in his possession by force; or if having recovered her liberty, she would desire rather to retain it, and to be freed of the man who had so much injured her; she accordingly, after making the above open, free, and distinct declaration of her past misfortunes, and her present resolution, was set at liberty, that she might go and live where she pleased.

And the after conduct of the said Jean Key afforded a proof of the veracity of her declaration, and of the sincerity and firmness of the resolution with which that was accompanied; for she repaired to the City of Glasgow, not daring to return to her own house at Edinbelly, where she could not live with safety, without a constant guard of armed men; and at Glasgow she continued to reside for the most part, so long as she lived, without ever once going near the said Robert M'Gregor, or suffering him to come where she was; and at length she died at Glasgow upon the 4th of October last, her life in all probability being shortened by means of the disaster she had met with.

Such being the case, and the judicial proceedings that have already ensued the events set forth in this libel, and that the unfortunate Jean Key herself was dead before this pannel James M'Gregor was apprehended last winter; after which, by several accidents, and particularly the absence of the pursuer from Christmas downwards, for several months, that he was necessarily attending his duty elsewhere; his trial at length came on on the 13th July instant, when he was fully heard to make his defence, and the Court directed informations upon the debate, and adjourned the trial till Friday the 31st current.

The substance of the pannel's defences, as well those lodged with the clerk in writing, in pursuance of the act of the 20th of the King, as those opened for him in the debate, consisted first of a denial of the libel, and giving such account of the matter of fact, as was in substance the same with what was averred in the name of Jean Key herself in the two bills of suspension of the act of factory, that were presented to the Court of Session as above recited.

Secondly, Impunging the relevancy of the libel, in so far as it charges the crime of hamesucken, and alleging that, at this day, that is no longer a distinct capital crime by the law of Scotland, however in former times it was held or accounted as such.

Thirdly, That the forcible abduction and forcible marriage fol-

lowing upon it, was not a crime relevant to infer a capital punishment.

Fourthly, That the forcible violation of the chastity of Jean Key by Robert M'Gregor, in consequence of such forced marriage, or this pannel's being aiding or assisting thereto, could not infer the capital punishment of a rape in the common acceptation of the word; for that no man can be guilty of a rape on the body of his own wife.

And it is farther alleged by way of defence to this article of the lybel, that the pannel was entitled to plead the benefit of the 4th act of the Parliament 1612; or that by reason of Jean Key's subsequent declaration, that she went with them of her own free will and consent, the pannel must be exempted from capital punishment, although the pursuer should be able to prove that the fact was at first violently and forcibly done against her will, and without her consent.

And it was farther alleged on this head, that such declaration of a woman being once made or given, she could not thereafter retract the same in prejudice of the persons concerned in the rape, or to deprive them of that exemption from capital punishment which her declaration once entitled them to.

And lastly, as the now deceased Jean Key's judicial declarations in this Court are amongst other pieces of written evidence expressly referred to in the libel, as what was to be produced against the pannel for proving his guilt before the jury, his counsel objected to the competency of such evidence, and although that debate might properly have come in the course of the trial, yet being a matter of law, and of great weight and moment, the Court very fitly directed, that the same should be treated in the informations, although it does not immediately belong to the relevancy, either of the libel or defences, but to the means or method of proof of the former.

Concerning the first of these heads, namely, the denial of the libel, and the contrary allegations in fact, that Jean Key was carried off from her own house, though seemingly by force, yet in reality with her own consent, and in pursuance of a previous concert betwixt Robert M'Gregor and her; the pursuer for reply declared at the debate, and now saith, that these allegations, if true, and if they can be proved, to the satisfaction of an impartial jury, will be doubtless very material for the defence of the pannel against all and every of the crimes charged in this indictment; and therefore the pursuer does not oppose the pannel's being allowed to prove these facts alleged in his defence, and all pertinent circumstances for evincing or confirming the same.

Secondly, With respect to the charge of the crime of hamesucken, it is distinct from the other crimes committed,—and the punishment to be inflicted for it as a specific crime, may be more severe than that to be awarded for the other offences, with a view to which it was committed.

By the law of England, for the security of mankind within their own dwelling-houses during the night season, and of their goods

or property there, and the consequential security of their persons, which must be exposed to mischievous accidents, when nocturnal thieves break into their houses, though it be originally and principally with an intent to steal their goods, a particular species of crime is established, unknown in the law of Scotland, which is termed burglary, and is thus defined 4 Coke 39, "Where a man breaketh and entereth the house of another in the night time, to the intent to commit some felony, whether the intention be executed or not." And the punishment of this crime is capital, and it is excluded the benefit of clergy.

In the like manner the law of Scotland, and with greater reason for the security of men's persons within their own dwelling-houses where they are lying and rising nightly and daily, for the safety and repose of mankind at home, and to render it true by peculiar sanctions, which the civil law well defines, *Domus tutissimum cuique refugium ac receptaculum* (*L* 18, *ff*. *de injus vocando*) hath in ancient times received and established a particular name for the crime that is committed by the violation of this asylum, calling it hamesucken, and making it punishable capitally, even as ravishing of women, 4th book of the Majesty c. 9, where it is not first introduced or enacted, but spoke of as a known thing.

[Long quotations follow from Skene's Treatise on Crimes, and his work *De verborum significatum* to establish the definition of hamesucken, viz. the entry of a man's house to slay him, or to do him any injury; and to prove that this is a capital crime by the law of Scotland. The treatise of Matheus is also referred to, to shew that the same law prevails on the continent. After which the prosecutor proceeds.]

And such being the nature of this crime, wherever it has been received as a distinct species of crime, can there be any possible doubt that the particular injuries, with intent to commit which Jean Key was assaulted in her own house, were of a nature sufficiently heinous and atrocious, to come up to the crime of hamesucken, and without comparison greater than if the pannel and his accomplices had violently beat and bruised her; in short any thing less than the immediate murder of Jean Key: Even the loss of one of her limbs, if death should not follow upon such loss, would have been a smaller injury or damage than what this hamesucken was committed to bring upon her; which was to rob her, not indeed of life, but of every thing that is valuable in it—her liberty, her chastity, her peace, and content of mind, her estimation and character in the world, and her whole fortune and estate. This was invading or assaulting her within her own house with a witness! It was doing her such an injury as left her nothing beside her life which it was not the interest of the criminals to bereave her of, but left her a life destitute of comfort, credit, or happiness.

And in the very acts that were done within her own house, could there be any more atrocious injury or violation of the King's peace and of the sacredness of that sanctuary, than for a band of armed

ruffians to enter in the night, in the deep of winter, to lay their impious and violent hands upon the owner of that house who had so many titles to be treated with respect and tenderness, being a woman, a minor, a widow, and that lately become such, and an heiress; and to drag such a person in that season of the year and of the night from her own house, and from the arms of her mother and uncle, and carry her off a captive. It was a crime, independent of all that followed, and supposing that she had been happily or timely rescued before any of the after mischiefs ensued, that would have highly merited the severest censure of the law for the atrocious hamesucken alone.

And that the law of hamesucken is at this day in force, there was nothing alleged on the part of the pannel to create the smallest reason to doubt. It may be true, that in later times examples have more rarely occurred of putting the same in execution, and that hath been plainly owing to the advances of civility and good manners of this country; but it ill becomes those who in these happier times in which we live take upon them to disgrace and shock the present age by committing such barbarities as were more frequent in times past, to allege that the law is obsolete, that was introduced for repressing of such enormities, as they themselves, by now committing, demonstrate the necessity that such law should be still in force, for the common safety of mankind.

And in reality the law is still in force, although this, like all other penal laws, lies asleep till the occasion offers for exerting its terrors. It is not therefore dead, but is still ready to speak when such occasion offers as the present, which calls so loudly for its vengeance; no law book has said, no court of justice has ever found or judged, that the law of hamesucken is obsolete; and the contrary is affirmed by Sir George M'Kenzie in his Treatise of the Criminal Law, first published in the reign of King Charles the Second, and dedicated to the Duke of Lauderdale then Secretary of State for Scotland, and again published after the revolution under a privilege granted to the bookseller by the Privy Council in November 1697.

[The information then refers to the treatises of Bayne and Forbes on the criminal law, and to the case of Haldane, and that of Campbell and M'Kinnon, (the last of which was tried before the Sheriff) to prove that hamesucken is still a capital crime by the law of Scotland. The information then proceeds.]—

The third matter offered by way of defence for the pannel, was to those articles of the libel which charge the crime of rape, in both the senses of that word or term in the law; as in this case there was committed, after the hamesucken already mentioned, (as by itself a capital crime, independent of all that had followed) a forcible abduction of Jean Key, with intent either to violate her person, or to force her to a marriage; and which intent was carried into execution in both branches, they having first caused the form of a marriage to be celebrated with her, without her consent and against her will, and then, under colour of consummating that forced mar-

riage, concurred together in causing her chastity to be violated by Robert M'Gregor, then, and still an outlaw for murder.

These three things taken together, (independent of the hamesucken, and had she been carried off from any other place than her own house, it would be a hard matter to maintain, that they did not amount to a capital crime, because the last alone, or the forcible violation of her chastity taken *per se*, was confessedly such; and therefore the counsel for the pannel were reduced to seek for his defence, by untwisting that complication of crimes, with which he and his accomplices are justly chargeable from the facts set furth in this libel; and in pursuance of this plan to allege, that by the law of Scotland, the forcible abduction alone, or even the forcible marriage following upon it, if no more happened, was not a capital crime; and then, that the forcible violation of the person, although *per se* it would have been a capital crime, yet having been committed after the former proceedings, it was not such, because no man can be guilty of a rape upon the body of his own wife.

Now the pursuer must submit to the Court, if there is not something shocking to the understanding of mankind in this scheme of defence; which is owing to the extreme guilt of the pannel and his accomplices, that forces his counsel to exert their ingenuity or invention, to make some colourable defence for him; but in justice, and in common sense, is it possible to conceive, that the accumulation of more crimes, in one enterprise, can possibly excuse from any one of them. It may be true that the husband, who is lawfully such with the consent of his wife, cannot commit a rape upon her:—But will it thence follow, that a man, whose only title to the name or character of a husband, was the precedent crime of a forcible abduction, *vi et armis*, of the person of a woman, to remote and desart places, and then being guilty of the impious profanation of an ordinance of divine appointment by causing the form of it to be celebrated against the will, and without the consent of the woman,—that these previous crimes can justify or mitigate, or render less criminal the subsequent violation of her person, on pretence of a title to enjoy it, so unlawfully acquired.

A man might as well pretend to excuse himself from being an intruder, or violent possessor of the estate or lands of another, because, previous to that possession, he extorted, *vi et armis*, from the lawful owner, a conveyance to the property of the lands; or rather, because, previous to that possession, he had been guilty of forging or counterfeiting such conveyance from the lawful owner, to which the present case is more parallel than the former instance; because he who, with a pistol or dagger at his breast, yet in fact executed a conveyance of his lands, made a title of possession, subject to a reduction indeed upon proof of the force, but in the meanwhile it was the deed of the owner, *qui coactus voluit*; but in the present case, there was no deed done by Jean Key, either under her hand, or by repeating of words, or so much by a courtsey or a nod, importing her consent to become the wife of Robert M'Gregor; but she was held by force by this pannel, or some other of his accomplices, whilst the pannel's brother Robert, the outlaw

for murder, took her by the hand, a miserable captive as she was; and the person who acted as the priest in the ceremony, without receiving any token of consent upon her part, wickedly and impiously took upon him to pronounce her to be the married wife of Robert M'Gregor.

And in such case, is it possible to maintain, that Robert M'Gregor and his accomplices would have been capitally punishable for violating the chastity of Jean Key, if that had been committed in a transient fit of lust, after which she was suffered to depart; affected indeed, and grievously injured by what had passed, but now still her own mistress, and possessed of her liberty and estates;—and that the same act of violation of her chastity shall be less criminal, and escape the capital punishment, because it was accompanied and connected with the further precedent crimes of a forcible abduction and marriage, brought about with intent to keep her person and estate, during her life, under the power of the ravisher?

The pursuer cannot help conceiving it to be a strange defence, or vindication of a person accused of one crime, that he should plead for that purpose, that he himself had committed, or was guilty of, other precedent crimes, which by themselves, if this actual violation of the person had not followed, would have been high crimes, and severely punishable by the law.

And as for the question how far that punishment should go by the law of Scotland, for the crimes of forcible abduction, and forcible marriage alone, independent of the preceding hamesucken, and of the subsequent violation of the chastity of Jean Key, which it is fit to treat separately, that every article of the pannel's complicated guilt may have its due weight and its due punishment when proved, and because it is a possible case that some articles may be proved, and not all, the pursuer is sensible of the disadvantage under which he can plead, that the same may, or ought to be a capital punishment, (for if it may, it certainly ought,) by reason of the interlocutor of this Court last summer, in the trial of Thomas Gray, and others his accomplices, for the forcible abduction, or carrying away, and the forcible marriage of Jacobina Moir of Earnslaw, who was also a minor and an heiress; in which this Court found the libel relevant only for an arbitrary punishment; which, upon the pannel's conviction, was accordingly inflicted.

And yet as, in that case, the interlocutor contains no determination of an abstract point *in jure*, but only finds the libel against Thomas Gray relevant to infer an arbitrary punishment; and as in that libel the abduction itself was not directly forcible, but at best a mixture of fraud and force; inasmuch as Miss Moir had, with her own and her mother's consent, gone to Leith that day in company with Christian Duncan the milliner, who betrayed her, attended by Anna Pentland, a young girl, her own maid; and also consented to return with Christian Duncan in the coach from Leith to Edinburgh; and though Duncan, in confederacy with Gray, directed the coachman to drive them, not directly to Edinburgh, but to the Sands of Musselburgh, where the forcible marriage was

celebrated, upon which no consummation followed; but instead of that, the young woman was in a few hours carried back to her mother's house without any harm done her;—this abduction might be thought not properly, or directly forcible, but rather fraudulent; and consequently, the interlocutor of the Court in that case, does not by any means afford a precedent in point to the present case, where the abduction and the marrriage are libelled to have been brought about by downright force, in the most strict and proper sense; and therefore the pursuer hopes to be forgiven, when he begs leave to treat this question as yet entire, in a case such as the present, and to pray the judgment of the Court upon it in this cause.

The question is therefore, whether the second and third crimes charged in this libel, being the forcible abduction of Jean Key, in order to, and joined with, a forcible marriage, celebrated as with her, be punishable capitally by the law of Scotland; and this, abstracting from the first crime libelled, being the hamesucken, and the fourth or last crime libelled, being the actual violation of her person, both which have been already treated, and are severally capital *per se*; and the last, as it has been endeavoured to prove, not the less criminal, that the same was preceded by these two intermediate crimes of the forcible abduction and marriage, which the pursuer is now to submit to the Court, whether these also did not amount to a separate capital crime? And in treating this question, the pursuer is aware of the main, or the sole objection to the affirmative, namely, "That there is no positive statute in Scotland, nor any custom or precedent for punishing such crime capitally." Notwithstanding which, the reasons and authorities which the pursuer had to offer for the affirmative were these following:—First of all the learned Craig, L. 1. D, 8, upon this title, *quo jure Scoti hodie utuntur*, lays down these propositions, that the municipal law of Scotland consists, first, of acts of Parliament, and confesses that we have properly no other written law but these; and that the second rule for determining causes is consuetude; then he adds for a third rule; Si jus proprium et consuetudo defecerint, isqui jurisdictione prœst ad familia producere et vel jurisdictioni vel auctoritai supplere debet, præcipue si ad eandem utilitatem, tendat eademque concomitetur ratio. Neque illud puto negligendum, quod in vicinis gentibus in tali specie observatur. Et ad easdem consuetudines aliquando, confugiendum quoties jure proprio et consuetudine, destituimur. This last principle does more specially hold and take place in the criminal law of Scotland, whereby the long received and accustomed form of the libel, the major proposition contains an averment, as the said libel against the pannel did, that the crimes charged were such, and punishable by the laws of God, and the laws of this and other well governed realms. And from the records of the Court of Justiciary, called the Books of Adjournal, it appeared, that such hath been the constant practice, not only in the libels, but in the arguments of the counsel on the relevancy, either of the libel or defence. That frequent appeals are made to texts of the Holy Scrip-

ture, or to the opinions of foreign lawyers, or the decisions of foreign courts in similar cases; and the reasonableness of such usage and appeal consists in this,—That crimes are offences against common humanity, and are equally such in all civilized nations; and depend, not upon peculiar constitutions, in such manner as the laws governing private right and public government may do, and which are therefore more various in different countries; also, even these civil constitutions may very often afford lights for explaining and supplying each other. Upon the same plan, therefore, on the present question, the pursuer begged leave to quote in the first place, the divine law concerning the violation of liberty, or forcible abduction of the person of a man, woman, or child, which is to be found in the following texts; Exodus xxi. 16. And he that stealeth a man and selleth him, or if he be found in his hand, he shall surely be put to death. Deut. xxiv. 7. If a man be found stealing any of his brethren of the Children of Israel, and maketh merchandize of him, or selleth him; then that thief shall die, and thou shalt put evil away from among you. [Mathews and Perezin are here quoted by the prosecutor.] As for the practice of neighbouring nations in respect of this crime of forcible abduction, the same is capitally punished in the best governed nations who are the nearest to us, and with whom we have had and still have, the greatest intercourse. In France the civil law appears to be in more entire observance than elsewhere; for the rape of seduction is there capital, as well as the forcible abduction; except that in the former case they have admitted this mitigation of the civil law, to allow the man in some cases to redeem himself from the capital punishment by instantly marrying the woman who he had seduced, as may appear by many precedents quoted in Brillons Dictionaire des Arrets voce Rapt. In the low countries, Voet informs us, tit de vi Publica No. 5th in fine, Neque moribus hadiernis a juris civilis dispositione in puniendis raptoribus, eorumque Ministris et adjutoribus, recessum videtur. sed magis ipsum jus civile edictis firmatum. And for proof of this he quotes an ordinance in the province of Holland, Anno 1580, of Zealand, Anno 1583, and of the States General, Anno 1656. In England this matter is regulated by a special statute, Third Henry the Eighth, ch. second, by which the forcible taking away and marrying a woman against her will is made felony. And if this were a mere arbitrary constitution peculiar to that kingdom, possibly it might not be justly founded upon as a proper prosecution of Craig's rule of following, quod in vicinis gentibus in tali specie observatur. But we see from the passage just quoted from Voet, that in the Low Countries they have also positive constitutions to this purpose, founded on the general principle of the Roman law, and the reason of the case, and there are such likewise in France. Now when the neighbouring customs are thus settled by statutes or edicts formed on general principles, which are for the common interest and utility of mankind, it would altogether defeat Craig's rule for having recourse to the laws of other well governed nations. Quoties jure proprio et consuetudine destituemur, if every foreign law

was to be rejected, merely because they were so much wiser than we, as to enact it by positive authority. The pursuer should only add upon this argument, that Sir George M'Kenzie in his criminals, page 175, speaking of plagium (or man stealing,) and the punishment thereof by the Divine and Roman law, adds, " That with us, Egyptians, and others, stealing children have been likewise punished by death." Now, for this there was no statute, even as there is none for the punishment of common theft or forgery, which yet are daily punished capitally; and it seems not easy to assign a reason why the stealth or robbery of goods from the house. suppose of Jean Key, or from any other house where she had them placed, should be a capital crime, or that the stealing of a child should be such, and yet that the robbery, plagium, or forcible abduction of a grown person herself, should not be in like manner punishable; and with these considerations and authorities, that point was by the pursuer submitted to the Court.

As to the fourth crime charged in the libel, to which the pannel was accessory, namely, the forcible violation of the chastity of said Jean Key against her will, the pursuer had already treated above: It is confessedly a capital crime, if it were the sole one that was committed at the occasion libelled; and the question for the judgment of the Court was, Whether it be less punishable, because it was accompanied or preceded, and opportunity obtained for perpetrating the same at leisure, by the other attrocious crimes last mentioned, of the forcible abduction and pretended marriage? It remained only on this article of the charge to consider the defence for the pannel offered, for restricting the same to an arbitrary punishment, upon the 4th act, 1612; which statutes and ordains in the words following:—" That if any, being art or part of ravishing of women, be pursued for that heinous offence, and defend themselves by the subsequent consent of the woman ravished, or by her declaration, that she went with them of her own free will and consent, (albeit in that case, the woman's declaration of her consent may excem them from capital punishment.) That if the woman's parents, or nearest kinsfolk, or his Majesty's advocate, be able to verify, by determination of the assize, that the fact was at first violently and forcibly done against the party's will, and without their consent, the subsequent consent or declaration of the party shall not excem the offenders from his Majesty's arbitral punishment of warding their persons, confiscation of their goods, or imposing upon them pecunial penalties at his Majesty's pleasure." And the allegation made for the pannel, to bring him within the terms of that statute, the pursuer understood to refer chiefly to the declarations contained in the two bills of suspension above mentioned, which were signed by Jean Key at Edinburgh, in March 1751 years. For as to any parole evidence, the pannel might bring of words uttered to such purpose by Jean Key at any casual meeting with company in the highlands, when she was at the same time in the hands, and under the immediate power of her oppressors, the pursuer did not apprehend that the counsel for the pannel could much rely upon that evidence for maintaining his

defence upon this statute; but however that may be, to the defence itself the pursuer replied, that the plain reason and intent of this statute appeared to be the same for which in France, as above mentioned, men guilty of the rape of seduction or the first debauching of young women, are sometimes permitted to redeem themselves from the capital punishment, by immediately marrying the woman injured. It is a piece of mercy extended to the guilty, for the sake of the innocent or less guilty person. And for the like reason was this act of king James VI. made in the year 1612, which provides for the other case of a *stuprum violentum*, or proper rape, where the woman was altogether innocent; and it supposes, rather than directly enacts, that her subsequent consent shall exempt the criminals from capital punishment; that is, the actual ravisher and his accomplices: And it seemed to be plainly calculated for such case, as within these two or three years we saw one example of that fall out in the stewartry of Kirkcudbright, where there was a forcible abduction in marriage and consummation, with a young woman of some fortune, carried off by a gentleman of little or no fortune; and after some time, the poor lady thinking it was the way to make the best of a bad bargain, was pleased to declare her willingness to adhere to and live with him as her husband; upon which he was prosecuted at the suit of His Majesty's advocate in the manner directed by this statute, was convicted of the offence, and punished by a fine and imprisonment for one full year; and the pursuer did not know that any example could be brought of a woman who had suffered such injury, and after that gave a declaration of her consent, or that she went with the man of her own free will, without at the same time adhering to and living with him as man and wife; thereby giving the most certain evidence of her reconciliation with the offender, and of her election to become his wife, as the least of two evils in her present unfortunate circumstances; and if this be the true scope and meaning of the law, there was nothing of that kind in the present case. Jean Key, as soon as she was truly at liberty, and got a little time to recover herself from the terror and dismay under which she laboured during her captivity, (as would be proved) declared in the most solemn manner the truth of the case, and her deep sense of the grievous injury she had received; and that nothing could be more odious to her than to live with Robert M'Gregor; and gave a proof of her sincerity by her avoiding to come near him ever after as long as she lived. Again, the subsequent consent or declaration of the woman ravished, intended by this act as what might exempt the criminals from capital punishment, must at least be such a one as could leave no room to doubt of its being free, voluntary, and uncoacted: and in the circumstances of this case, there hath been no allegation made on the part of the pannel of a declaration or consent of Jean Key of that sort, that could be at all credible, or that was made in unsuspected circumstances, abstracting from the subsequent judicial declarations, that served to explain and account for, [illegible]her than to retract, any former appearances of consent that she [illegible]iven, whether by way of stratagem to get them to bring her

to Edinburgh, or after she came there, till she was taken out of the power and custody of James M'Gregor, by the wisdom and justice of the Court of Justiciary.

And this leads to the fifth and last topic to be here mentioned; namely, the competency of producing to the jury at the trial of the said libel, these judicial declarations of Jean Key then deceased, and who otherwise would have been herself produced as a competent witness for the King; so that these declarations, which, besides their being matter of record, should be further supported by parole evidence of the clerks of the Court of Justiciary then present when they were emitted, are now the best evidence, that by the nature of the case could be brought of a fact so essential to the issue, as the account given by Jean Key herself, the principal party, of what befel her, and which was rendered the more essential by the allegations made for the said James M'Gregor, in his defence, that the appearance of force used when she was first carried off from her own house were all a farce, acted in concert with herself, to deceive her morher and uncle: And as this judicial declaration was then the only method in which Jean Key's account of the matter could be heard, and a most unsuspected method it was, being taken fairly and judicially before the Court of Justiciary, it was therefore credible, necessary, and competent evidence. Such is the practice of this and other courts of justice, where the evidence of crimes is not confined to the testimony of witnesses upon oath, but other documents in writing are admitted, and either referred to in the libel, or given out in list alongst with the list of witnesses; sometimes the extrajudicial confession of the pannel, and letters either from or to him, or otherwise relative to the subject of the trial; though none of the contents of such letters could be written upon oath: And many such letters were produced in the late solemn trial of the Lord Lovat, as the written evidence made use of by the managers of the impeachment by the House of Commons for his conviction; and if the reason of the case be considered, every credible pertinent evidence for discovery of the truth concerning the fact or point that is in issue, ought to be admitted in the trial of a criminal, as well as it would be in a civil trial, whereof the fate depended upon the same fact. The question then brought in issue upon the said libel, and the defence offered for the pannel, was, whether Jean Key was carried from her own house, married to Robert M'Gregor, and detained some weeks in his possession by force and compulsion, as the libel alleged; or freely and of her own choice, as the pannel had averred. Now, let it be supposed, that while they had Jean Key in their custody, and after they had discovered that she could write, they had made her sign a conveyance of her estate to Robert M'Gregor, or to the pannel James M'Gregor, in trust, for his use, and that the pannel had gone beyond Sea, leaving a factory or power of Attorney to manage his affairs, and that a competition had been brought before the Court of Session, betwixt the uncle and next heir of Jean Key, and the then pannel, concerning the property of her estate. And that the uncle had brought or repeated a reduction of the pannel's title, as having been extorted *vi et metu*; the pursuer apprehended.

that in such action it could not be doubted, that these judicial declarations of Jean Key herself, would be admitted in the Court of Session as one material piece of evidence for proving the heir's reason of reduction on the head of force. Again, let it be supposed, that Jean Key, during her captivity, had found means or opportunity sometimes to write letters and get them conveyed to her relations, telling the misfortunes that befel her from day to day, pressing them to take measures for her relief, and directing them the best she could concerning the haunts or motions of her enemies, by whom she was held in bondage; was it possible to doubt, that in a question either civil or criminal, it would be competent to produce those letters as evidence, proving her hand writing, and by the persons who received the letters, when and how they came to their hands? It is true that such letters, whether produced in a civil or criminal cause, were not written upon oath by the persons from whom they came, and yet they were proper evidence in *suo genere* of the facts and transactions to which they relate: and if there be any reason for doubting the veracity of what they contain, the Court or the Jury, who were to be judges of the evidence, would make proper allowances for that consideration, that the written evidence was not upon oath. Now, what better evidence would such letters have been as he here supposed, than the deliberate solemn examinations of Jean Key, taken, emitted, and signed by her in presence of the Court of Justiciary; and for what good reason must such letters have been admitted, and these declarations refused, as not competent evidence. And further still, it appeared to the pursuer, that James M'Gregor proposed to offer by way of evidence of his defence, the two bills of suspension, by her signed extrajudicially, that were presented to the Ordinaries on the bills in March 1751; for what reason then could he object to the producing against him in the trial of the same issue, an evidence of the same kind, but much more unexceptionable,—her declarations taken and signed before the Court of Justiciary, whereof the judges had no temptation or interest to consult or regard any thing but justice or truth. It was therefore certain, that Jean Key spoke the contents of these declarations in circumstances when she was at liberty to tell the truth, whether she had indeed told it or not: But as to the two bills of suspension, it was no less uncertain whether the contents of these be her dicta, or whether they be true. And last of all, upon this argument, let it be remembered, that Jean Key herself was the party invaded, aggrieved, and oppressed by the proceedings in the libel set forth, and complained of at the suit of the King, for the sake of public justice, and to put evil away from amongst us; and that Jean Key, the unhappy sufferer, was herself then dead, and so could not be brought in person to give evidence before the jury; and was dead before ever the pannel James M'Gregor was apprehended, or could be brought to justice; for she died at Glasgow the 4th day of October 1751 years, and the pannel James M'Gregor was brought from Fort William a prisoner to Edinburgh, on the 18th day of December following; now, though in common cases hearsay evidence was not to be admitted in the trial either of civil or criminal questions, yet the *dicta defuncti*, who suffered the

wrong; the persons, suppose, who received wounds of which he or she afterwards died, are always admitted to be proved by witnesses, and given in evidence. And this is not owing to any peculiar law in the case of murder, except that in fact it must be more frequently useful or necessary in that case; but the reason is the same, to give credit to what the party sufferer, by any other capital crime, such as robbery or rape, hath authentically declared concerning what befel him, and which he only, or best, could know, when by the providence of God it so happened that he was dead before the criminal could be apprehended or brought to trial; and consequently, it becomes impossible to bring the unhappy sufferer in person to give evidence against the criminal, by or from whom he suffered.—*In respect whereof, &c.*

INFORMATION

FOR

JAMES DRUMMOND, NOW PRISONER IN THE TOLBOOTH OF EDINBURGH, *Pannel*; AGAINST HIS MAJESTY'S ADVOCATE, *Prosecutor*.

THE information begins by reciting the substance of the charge, as contained in the indictment, and proceeds thus,

That as the offences with which he, the pannel, was there charged, supposing them to be true, were of their nature highly atrocious; so he was then brought to stand trial for these, under many and signal disadvantages: That the minds of people without doors had been greatly inflamed and prepossessed, from outward appearances and false rumours industriously propagated by the mother and other relations of the said Jean Key; who, underhand, had instigated the said prosecution, though they did not choose to appear above board, purposing to be adduced as evidence upon the trial. That as to the capital or principal offence charged in the said indictment, viz. the supposed ravishment or forcible violation of the person of the said Jean Key, Lord Chief Justice Hale, justly acknowledged to be the most knowing and upright judge that ever adorned the seat of justice, in his treatise of the pleas of the Crown, Vol. 1st, folio 635, had with reason observed, That it is an accusation easy to be made, hard to be proved, and harder to be defended by the party accused, though ever so innocent; which he there illustrates by several examples that had occurred in his own practice; where persons accused of this crime, though afterwards proved to have been entirely innocent, were convicted and condemned: And therefore concludes with this judicious recommendation, both to judges and juries, that they should be the more cautious upon trials of offences of this nature, wherein the Court and jury might with

much ease be imposed upon, without great care and vigilance; the heinousness of the offence, many times transporting the Judge and Jury with so much indignation, that they are over-hastily carried to the conviction of the person accused, by the confident testimony sometimes of malicious and false witnesses. That upon the same principles, Sir George M'Kenzie, the only author of any character who had treated of the criminal law of Scotland, under the title of Rapes or Ravishing, makes this judicious remark, and which was extremely applicable to the case in hand, from the fact, as it was afterwards stated in behalf of the pannel, "That the woman's consent is hard to be known; for that she might have at first consented, albeit she cried or resisted upon design;" plainly alluding to those outward appearances, whereby a woman might seem to be carried off against her will, when in reality she was consenting thereto; and assumed those outward appearances of reluctance to conceal or cover that consent which in her heart she gave. Under the sanction of which authority, as the pannel had reason to expect from the known candour and justice of the Judges of the Supreme Court a fair and impartial trial, so he was hopeful, that those of the jury who were to pass upon his assize, would divest themselves of all prejudice, and give due attention to what should now be offered in his defence. Another singular disadvantage taken notice of was, that the pannel was there brought upon trial as the supposed accomplice of his brother Robert, in the attempts by him made to accomplish that marriage, whilst Robert himself had not hitherto been tried or convicted for that; as one of the capital defences which the pannel was to insist upon, as relevant both to exculpate and alleviate from all and each of the aforesaid crimes, was Jean Key's previous consent, in concert with Robert, to every single step that was taken in that affair from first to last. This antecedent concert betwixt Robert and Jean Key must be of extreme difficult probation to the pannel, whilst Robert himself, if previously tried, might have given full and satisfying evidence of all the previous correspondence betwixt him and the said Jean Key. But as the pannel was advised, that by the law of Scotland, accessories or accomplices might be brought to trial even before the supposed principals, all that he proposed by this observation was, to engage the Court and Jury to a stricter attention to the exculpatory proof that should be offered.

And in order to remove these aggravating circumstances, upon which the prosecutor had laid so great stress, viz. that Jean Key was an heiress, which had encouraged Robert and his accomplices to attempt a forcible marriage with her, in order to possess him of her estate; and that Robert himself was at the time an out-law or fugitive, by sentence of the Court of Justiciary in the year 1736, for not appearing to stand trial, as accessory to the supposed murder of John M'Laren; it was observed for the pannel, that Jean Key's estate, described in the indictment itself, portioner of Edinbelly, did noways entitle her to be characterized a fortune sufficient to have tempted any man to involve himself in such a complicated scene of iniquity, far less to engage others who were not to be gainers thereby, who therefore could have no inducement but to

assist a friend and relation in accomplishing a marriage, which, they had reason to believe, and which in the sequel will appear, had been previously concerted betwixt Robert and Jean Key: For that her whole fortune, when valued to the utmost, was not worth above 16,000 merks, subject to the liferent in favours of her mother, and other considerable debts: That Robert was but a boy of 14 years of age in the year 1636, when he and his two brothers had been most groundlessly accused as accessory to the murder of John M'Laren: That Robert having gone abroad to push his fortune, before any inquiry had been made, or prosecution intended on account of that murder, advantage had been taken of Robert's absence to throw him into the pannel with his two brothers: That as he could not compear, being abroad at the time, sentence of fugitation had passed of course, not upon any trial or conviction, but merely for absence; upon which sentence no denunciation had ever followed. That the other two brothers who were at home stood their trials, and were acquitted by the verdict of their country: That Robert having remained abroad till the year 1744, he then enlisted with General John Campbell, to serve his Majesty in the wars in Flanders: That he was wounded at the battle of Fountenoy, and taken prisoner by the French: That having returned home in the year 1746, he rejoined the regiment and served there till he obtained his colonel's discharge: That thereafter he married to his first wife, with consent of her friends, a sister of Mr Graham of Drunkies, with whom he lived openly and avowedly, and by the marriage contract made suitable remuneratory settlements out of his own private fortune and estate: That during this period, as he was either ignorant of, or did not apprehend any bad consequences from that sentence of outlawry, pronounced in absence so many years before, as he was at no time afterwards challenged for that supposed murder; so during these latter years he appeared as a free subject, and more particularly, was frequently here at Edinburgh; and therefore, as in all other respects he was an equal match for the said Jean Key, her fortune could be no temptation either for him or his friends to involve themselves in such enormities. Though Jean Key's particular situation, her affection for Robert, her propensity to enter again into a second marriage, as she knew herself not to be with child to her first husband, the thraldom she had been subjected to under her mother's government during her younger years, and which she had now re assumed upon the death of Jean Key's first husband, when put in balance with the outward indecency of marrying so soon after her first husband's death, or of marrying again without her mother's consent. who she well knew would never agree to any marriage, made her resolve to yield to a marriage with Robert Campbell, but under such false colours as she imagined might preserve decency in the eyes of the world, or procure a reconciliation with her mother, upon the outward but false appearances, as concerted betwixt her and Robert, that at first she had been forced into this marriage against her will:—a very transcript of the case which Sir George M'Kenzie, in the above mentioned passage, supposes. These collateral extraneous circum-

U

stances being laid out of the case, the counsel for the pannel proceeded to state the fact as related by the pannel himself, and as they expected it would come out upon evidence: viz. " That previous to the 8th of December, Robert Campbell and Jean Key " had several private interviews and meetings betwixt themselves, " in the fields, and other places adjacent to the House of Edinbelly: " That at one or other of these meetings she consented to marry the " the said Robert Campbell; and that this should be proposed to " her mother, in order to gain her consent: That these proposals " were carried on by Mr M'Cune, bailie to the Duke of Montrose, " and by him communicated to Jean Key's mother, upon one or father of the first days of Dec. or —— 1750 years: That Mr M'Cune " pressed these proposals, and expostulated the matter with the mother in presence of the said Jean Key herself, whose silence upon " that occasion was a clear indication of her approbation: That the " mother having positively refused to give her consent, by reason that " she judged it indecent in her daughter to marry so soon after her " first husband's death, and having therefore declined to receive a visit from Robert Campbell upon that footing, matters were so concerted with the said Jean Key herself, that Robert Campbell and she " should again meet in the fields: That upon occasion of these meetings, both before and after that the mother had thus denied her " consent, sundry letters were conveyed from Robert Campbell to " Jean Key, and answers returned from the said Jean Key to him: " That one or other of these letters from Robert Campbell to Jean " Key was accompanied with two plain gold rings, that Jean Key " might choose which of these fitted her finger best, being intended " for her marriage ring: That Jean Key received and kept both " these for rings, having tried them upon her finger, and returned " for answer by the bearer, that they were both too large, but that " one of them might afterwards be taken in so as to fit her finger; " and that accordingly, after the marriage, one of these rings had " been sent up to Edinburgh, and adjusted to the size of Jean Key's " finger: That the result of all these letters and private meetings " was an agreement or concert betwixt them, that Robert Campbell, " accompanied with some few of his friends, should repair to the " house of Edinbelly upon the evening of the 8th of December, as " Jean Key was apprehensive of being carried from thence by her " mother, in order to disappoint the intended marriage, so that no " time was to be lost in the execution of this scheme: That Jean " Key was seemingly to oppose and resist, in order to deceive and " impose upon her mother; but that Robert Campbell and his companions disregarding these outward appearances, should seemingly " carry her off by force; and that how soon the marriage itself was " over, her mother, thus deceived, might readily be prevailed upon to " be reconciled: That Robert having communicated this concert to " the pannel and others, his friends and acquaintances, demanding " their concurrence and assistance, they readily consented thereto, " not apprehending any bad consequences therefrom, as they well " knew that such was the concert betwixt Robert and Jean Key " herself, having then seen in Robert's hand a letter from the said

" Jean Key to him, dated the 4th day of September 1750 years, the " original of which was then produced by the pannel, and which " letter is of the following tenor:—' *Edinbelly, Dec.* 4*th* 1750.— " My dear sir, I have the pleasure of yours, and believes there is no- " thing on earth that gives me greater joy than to hear of your being " in good health. I observe you want that I should run off with you " in a private manner, in order to have me to be your married wife. " I can scarce consent to do any such thing in private, if I thought " I could obtain my mother's consent; but rather than you and I " should be disappointed of that happy state of life, be sure to come " here upon Saturday night next; and notwithstanding that I de- " clare this to you, that I am willing to go with you as my husband, " I will not discover my mind to any of my friends, but will be back- " ward in my consent to you in their presence, which needs be no " scruple to you; but if I was out of their sight once, my dear, I " would shew you all the manner of consent. Therefore fail not to " come that night, and I will have my clothes packed up, in order " to be taken along with myself; and I am, my dear life, your own " till death. (Signed) JEAN KEY.—P. S. I beg fail not to come, for " cannot sleep till you are with me.' Addressed the back thus: " ' To Mr Robert Campell, tacksman of Ballieferl. Hast and care.' " That in pursuance of this concert, the said Robert Campbell, ac- " companied by the pannel and others, in all to the number of seven, " did repair to the house of Edinbelly upon the evening of the 8th " of December, where having demanded to see Jean Key, which was " at first refused by the mother, who had thrust her daughter into a " closet, but who afterwards made her appearance, and the said Jean " Key acting the farce which had been concerted, of seemingly refus- " ing to comply, and struggling when led to the door, she was mount- " ed upon a horse behind the said Robert Campbell, and thus car- " ried without violence or bad usage of any kind, other than what " force had to appearance been used in bringing her out to the house " of John Leckie, at the kirk of Buchanan, a few miles distant from " the house of Edinbelly, where they stopped for some hours to take " a little refreshment; and more particularly, that it was absolutely " false that Jean Key was, upon the aforesaid occasion, tied with " ropes, and flung across the forepart of the horse, or in any other " way maltreated or abused, as there was truly no occasion for any " such usage; Jean Key, from the moment she was out of sight of " the house of Edinbelly, being as forward to proceed to the consum- " mation of the intended marriage as could have been expected or " wished: That upon the morning of Sunday the 9th day of Decem- " ber they proceeded to Ruindennan, near to the head of Lochlo- " mond, where the marriage was to be solemnized by a clergyman " who had been previously trysted for that special purpose: That " Jean Key was there waited upon by Mrs M'Alpine of Blairbogie " and one of her daughters; and that these two ladies, at Jean Key's " special desire, remained with her to witness the marriage: That " Jean Key, to outward appearance, was cheerful and easy during " the whole time, and frequently expressed her surprize to Mrs " M'Alpine and her daughter, when by themselves, what could de-

" tain the clergyman, who did not come till the Monday's morning, " instead of being there upon the Sunday evening, according to ap- " pointment: That early upon the Monday's morning Jean Key and " Miss M'Alpine went out by themselves to take a walk upon the " Loch side, when, having received a message acquainting them that " the minister was come, they instantly repaired to the house, where " the marriage was celebrated with all the outward appearances of " satisfaction on the part of Jean Key: That she enquired at these, " her female companions, where they were to be bedded; and made " choice of the bed which was most to her taste: That she retired " with these ladies and the landlady of the house to be undressed " and put to bed: That neither Robert Campbell nor any of his " companions were in the room till such time as the said Jean Key " being in bed, notice thereof was sent to Robert Campbell: That a " messenger was dispatched that same day to the house of Edinbelly " to acquaint Jean Key's mother and her other relations there, that " she was at Ruindennan; that she was now married; that she hoped " for her mother's forgiveness, and begged to see her mother and " other relations there: That accordingly Annabel Mitchel, aunt to " the said Jean Key, and others, came to Ruindennan that same " evening, and staid there that night; the whole company, particu- " larly the said Jean Key, behaving in a cheerful easy manner: That " she solicited her aunt to intercede with her mother to be recon- " ciled with her: That the new married couple retired that evening " to their bed-chamber in the sight of her aunt, and those who had " come alongst with her, without the least appearance of reluctance: " That the next morning, when the aunt was to return to Edinbelly, " she desired Jean Key and her husband to send a servant alongst " with her, to receive so many of Jean Key's clothes as might serve " her till peace was made up with the old woman her mother, which " she hoped would not be long a-doing: That a servant was accord- " ingly sent, and brought away part of Jean Key's clothes: That " from Ruindennan they proceeded to the pannel's house, where " they cohabited as man and wife for several weeks, seemingly with " the greatest satisfaction and contentment, receiving and paying " visits, and going publicly to church in that character; and more " particularly, that upon occasion of the rumours propagated by her " mother and her relations of the alleged violence committed upon " the person of the said Jean Key, that she was still detained in " captivity against her will, and that the mother had applied, or was " to apply, for justiciary warrants, and for sequestration of the said " Jean Key's estate, Robert Campbell of Torrey, Sheriff-substitute " of the county of Perth, and James Fairfowl of Brandam, one of " the justices of peace of the said county, in company with several " other gentlemen, having accidentally met with the said Jean Key " at the house of   , where she was then paying a visit, took " that opportunity of conversing with the said Jean Key privately " by herself, touching the truth or falsity of these reports, proffering " her their immediate assistance in their respective capacities, as " magistrates, and vested with authority, to conduct her safely to " whatever place she would choose to go to, in case she should ac-

" knowledge that she had either been carried off by force against her
" will, had suffered any other violence, or was detained contrary to
" her inclinations: That these offers were made at a time and under
" such circumstances, that these magistrates were in condition to
" have executed what they thus proffered, but that they were di-
" verted therefrom by the said Jean Key's giving them the strongest
" assurance that these reports were absolutely false; for that the
" original force seemingly used in bringing her away from her own
" house was, by concert with her, to deceive her mother: That she
" was married to Robert Campbell with her free will and consent:
" That she was resolved to adhere to him, and would never see the
" face of any of her relations till they should be reconciled to him,
" and desist from these measures for distressing both him and her;
" and that upon these considerations the said Robert Campbell, She-
" riff substitute, and James Fairfowl, Justice of the Peace, gave it
" as their advice, that such being the fact, she ought forthwith to
" repair to Edinburgh, to put a stop to these proceedings: That in
" pursuance of this advice the said Jean Key, accompanied by the
" pannel and a single servant, did repair to Edinburgh in the latter
" end of the month of February 1751 years, where the said Jean
" Key was at full liberty and freedom, without the least appearance
" of constraint of any kind: That she went to the playhouses and
" other places of public entertainment, whereby she was at full free-
" dom, if she had been so disposed, to elope or to have applied to
" the Supreme Judges, both civil and criminal, for their protection;
" but that her conduct and behaviour, when left to her own choice,
" was quite the reverse: That as her chief purpose for coming to
" Edinburgh was to prevent the sequestration of her estate, or if
" such warrants were already issued, to procure the same to be re-
" called, she applied to gentlemen of character and experience for
" assistance and advice in the premises: That as these gentlemen
" had likewise been prepossessed with the false reports industriously
" propagated to the prejudice of Robert Campbell and his supposed
" accomplices, they scrupled to interest themselves in her behalf,
" until they had previously examined her in the strictest manner as
" to the truth or falsity of these reports; when, being satisfied from her
" own mouth that the case truly was as above stated upon the part
" of the pannel, and upon the strongest assurances that she was de-
" termined to adhere to Robert Campbell as her husband, they con-
" curred in advising and forming these two bills of suspension, pre-
" sented and signed by the said Jean Key, referred to in the indict-
" ment, dated the 5th and 18th of March, 1751 years; whereby, up-
" on the recital of a petition that had been presented to the Lords of
" Session, in name of Janet Mitchell her mother, and Thomas Key
" her uncle, charging Robert Campbell, the pannel, and others his
" accomplices, as guilty of the aforesaid violences, and of still de-
" taining the said Jean Key in captivity, and therefore praying for a
" sequestration of her estate; she positively disclaimed the several
" violences charged in said petition; averring, that the facts were
" grossly misrepresented and false; for that she never was carried
" off nor detained against her will, or under any kind of captivity;
" and that whatever had been done in the premises was in con-

" with her, and by her consent and approbation: That she was mar-
" ried to Robert Campbell with her free will and consent, and was
" resolved to live with him as her lawful married husband for life;
" and that upon her first judicial examination upon the said 18th of
" March, she again confirmed the truth of what she had asserted in
" these two consecutive bills of suspension: That upon this emer-
" gency, a very new and unexpected scene had opened; for that the
" mother and her friends, who had applied for and obtained the
" aforesaid warrants of sequestration, purposing to prevail with the
" said Jean Key to retract all that she had thus confessed over and
" over again in the most solemn and deliberate manner, having sug-
" gested that these acknowledgments by the said Jean Key had pro-
" ceeded from the impressions under which she still remained, and
" that therefore her person ought to be sequestrated in some proper
" house, where none but her friends and relations might have access
" to her; a warrant to the above purpose was granted upon the said
" 18th of May, whereby she was ordained to be carried to the house of
" John Wightman in the Potterrow, near Edinburgh, there to be
" detained until the 4th day of June thereafter; and that access
" should be allowed to her mother, friends, relations, and doers:
" with injunctions to the said John Wightman to advert that she
" should neither be forcibly carried away, nor allowed to go from his
" house without consent or order of the Court; and that the Magis-
" trates of Edinburgh should grant their assistance to make these
" injunctions effectual, and for that end to cause centinels to be
" placed on said house: That in pursuance of these orders the said
" Jean Key had been carried to the house of the said John Wight-
" man, and a guard planted upon the door of the house; and that
" as none but the mother and her friends, and others employed by
" them, had access to her during this her confinement and seques-
" tration, they had so wrought upon the mind of this poor young
" woman, as to prevail with her to come into their measures; in
" consequence of which the said Jean Key is said to have emitted
" the two declarations referred to in the indictment, of date the 20th
" of May and 4th of June 1751, retracting her former acknowledg-
" ments and declarations, so often and so solemnly repeated; and, in
" flat contradiction thereto, charging Robert Campbell, the pannel,
" and others their accomplices, with all the violences of which the
" pannel stood then accused: That under these circumstances it was
" a matter of no difficulty to suppose by what indirect means and
" practices this unfortunate young woman had been wrought upon
" to recant and deny her former acknowledgments, and to yield to
" her mother's sanguinary views, the terror with which she must
" unavoidably be struck from these dreadful preparatory steps of se-
" questrating her person, and clapping guards upon her, joined with
" the alarm which it was reasonable to think would be sounded in
" her ears, of her husband's being an outlaw for a capital crime, for
" which, if apprehended, he must unavoidably suffer, and that she
" herself would be involved in his ruin and misery, if she did not re-
" cant, must, from the nature of things, have wrought so powerfully
" upon the mind of this young woman, as to induce her to yield to

" whatever was proposed, as the only means for her own salvation.
" And yet the pannel had reason to believe it would come out upon
" proof, that even during that her sequestration, when neither the
" pannel, nor any concerned with him, had the least access to her,
" that she expressed a strong desire to have made her escape, in or-
" der to return to her husband, and to have bribed her guards if she
" had money sufficient for that purpose; but which was disap-
" pointed by the vigilance of those to whose custody she was com-
" mitted. Thus far the pannel did certainly know, and in course of
" the trial would make it appear, in case these latter declarations
" were allowed to be produced in evidence against him, which he
" humbly contended they could not: That several of the most ma-
" terial circumstances, which Jean Key had been prevailed upon to
" confess or acknowledge, were absolutely false; and which, if dis-
" proved, would be sufficient to discredit the whole, and to confirm
" the truth of what she had so often and solemnly declared upon
" the former occasions when free from any such constraint or un-
" due influence."

After recapitulating the above facts in a summary manner, the information proceeds to deduce from the legal defences against the charge, the first of which is founded on the actual consent of Jean Key to the abduction, notwithstanding the shew of reluctance made by her; and the second proceeds on the act 1612, which provides, that the subsequent consent of the woman shall save the ravisher from the capital punishment.

The information then proceeds:—And supposing such to be the import and operation of the statute 1612, as to the capital or principal defence here charged, viz. the forcible rape, it was with equal reason contended, that as the other offences charged were but the means of accomplishing the intended marriage, upon which the forcible ravishing is supposed to have ensued, if Jean Key's after consent or declarations are effectual to restrict the punishment otherwise due for the rape itself, they must much more be effectual to mitigate the punishment of those other supposed violences, which were but the preparatory steps to the marriage. If the consent or declaration is applicable to the ultimate act, it must needs operate as to all the intermediate and preparatory steps; as it would be absurd to argue, that the woman's declaration should restrict the punishment due for the supposed violating of her chastity, and yet that the husband should be hanged for the supposed abduction or forcible marriage.

Hitherto the pannel hath argued his defence upon supposition, that not only the actual ravishing, which the pannel admitted to be capital, but also all and each of the other offences charged as so many distinct and separate crimes, viz. the hamesucken, forcible abduction, and forcible marriage, were by the law of this country capital offences, and therefore, that if the pannel should be convicted of any one of these offences, he ought to suffer the punishment of death: But as the pannel was advised that these other offences, in the form and manner in which they were charged,

ought not to be sustained to infer a capital punishment, he stated his objections to these in their order.

And more particularly, in answer to that article of the indictment which charges the pannel with the crime of hamesucken as a capital offence punishable with death, from the pannel's accession to the forcible entry into the house of Edinbelly, where Jean Key resided at the time, and to the after violence that was used in carrying her away from said house; it was contended for the pannel, that however in ancient times some instances may have occurred where the crime of hamesucken may have been capitally punished, yet as this was not established by any positive statute to be the law of Scotland, and as the practice of latter years had justly receded from such erroneous precedents, these could not now be resorted to for establishing a point, so directly inconsistent with the first principles of law and justice.

It was admitted for the pannel, that crimes of all kinds might be aggravated from collateral circumstances; and that as every man's house was a kind of asylum which he had reason to consider as a *tutum receptaculum*, or protection against personal injuries, every such offence, when committed against a person within his house, was thereby greatly aggravated; and consequently might justly be punished with a greater degree of severity than would have been due for the same offence if committed in any other place; but that this specialty should so inflame the reckoning, as to convert that injury into a capital crime, was humbly contested.

Upon this principle it was, that the Romans, of all nations in the world, paid the greatest regard to the domicilium, which was held to be under the immediate protection of the *dii penates*, and on that account to afford an asylum; and every violation thereof to approach to the crime of sacrilege: And though, as a consequence thereof, every injury or offence committed against a person within his own house was esteemed to be thereby aggravated, no instance could be given where any injury or offence, otherwise punishable *pœna extraordinaria*, was, by that law, subjected to the *ultimum supplicium*.

That there is no statute making this a capital crime by the law of Scotland was acknowledged; and as no authority can be produced, either from the positive law of God, or from the civil law, which must needs be admitted to be the fountains and sources of the criminal law of Scotland, so far as not departed from by municipal or positive constitutions or invariable practice, whereby injuries of this kind should be capitally punished, it remains to be enquired, upon what other foundation this principle is assumed.

For as to the positive constitutions of other countries, where something similar to this may possibly have been enacted, and to which the prosecutor was pleased to resort, by reason that criminal libels do for ordinary refer to the laws of all other well governed realms; the pannel is advised, that the laws of nations in general may, with reason, be resorted to in cases of difficulty, where our own law is defective, it would be a dangerous precedent

to adopt every peculiar conceit of other nations to be the law of Scotland, especially in regulating the degree of punishment, unless these could be supported upon the general principles of equity.

And that this must the rather hold, for that the prosecutor, after all the research into all the laws of all other countries, has been able to condescend upon very few where a capital punishment is inflicted for an offence of this kind, not on account of the nature of the injury itself, but from its being committed against a person within his own house.

And so sensible was the prosecutor of the absurdities that must ensue upon this principle in its full latitude, that he was willing to suppose it could obtain where the injury thus aggravated was in its own nature attrocious. But as this admission was made to answer the present purpose, it lies upon the prosecutor, in maintaining the justice of his principle, to produce the law that authorizes this distinction.

Reference was made to the 9th cap. parag. 3d of the 4th book of the Regia Majestas, intituled, de Hamesucken ; the words of which are : " Et hoc crimen, ficut crimen de Raptu mulieris prosequatur " Upon which Sir John Skene made the following annotations : " Hoc crimen eo atrocius videri debet, quia non solum conjunctam habit Regij paces violationem sed etiam quia Domus sua, qua nihil est sanctius, nihil omni religione munitius, est cuique tutissemum receptaculum et refugium." And from these words of the text, " Sicut crimen de raptu mulieris prosequatur," it was said, that as the Crimen Raptus was capitally punishable, it must have been understood, that Hamesucken, which was to be prosecuted in the same way, was likewise to be capitally punished.

But the pannel, without disputing the authority of these books of the majesty, which for certain contain a variety of particulars repugnant to the first principles of the law of Scotland, is advised, and submits it to your Lordships, that these words do no wise respect the degree of punishment, but only the form of prosecution ; which, as established in the preceding chapter of the same book, title, de Raptu Mulieris, made it an essential requisite, that the woman should furthwith, and while the injury was yet recent, propel the same, and give immediate proof of the injury she had received : And so far the ancient practice went, as to hold this to be in like manner essentially requisite in the case of hamesucken ; and though, by the practice of latter years, this has been departed from in the case of ravishing, as well as of hamesucken, it well not from thence follow, that these crimes, of their nature so very different, the one infinitely more grievous than the other, either anciently were or now ought to be punished with the same degree of severity as capital crimes. A rape, by the laws of all nations, and by the first principles of justice, is a crime of so enormous a nature, as well merits the punishment of death. But there is no justice in the world to extend either the guilt or punishment to other injuries of an inferior nature, from this single consideration, that these injuries were committed against a person within his own dwelling-

house. Nor is it possible to say where this should stop; for as the law makes no distinction betwixt injuries of a higher or lesser nature, if this single circumstance of the party's being so injured within his own house were sufficient to render this a capital crime, every such injury, of whatever nature, great or small, behoved to be capitally punished.

And when the books of adjournal are looked into for precedents of this sort, though some few instances have occurred in ancient times, where a capital punishment has been inflicted for offences of this sort, under such circumstances as, if the like questions were to occur at this day, would justly be esteemed the height of injustice and oppression. It is extremely remarkable, that for many years past no instance has occurred where an offence of this kind has been prosecuted to any other effect but an aggravation of the particular injury, or further sustained but to infer an arbitrary punishment; and as the most express statute may go into desuetude by contrary usage or practice, the same practice must be much more effectual to vary a former usage established by a few precedents inconsistent with the principles of justice and equity.

It will not be disputed, that in almost all the cases recorded in the books of adjournal, where very attrocious injuries have been prosecuted as hamesucken, the libel has either been restricted of consent, or only sustained to the effect of inferring an arbitrary punishment; and upon conviction, such arbitrary punishment, inflicted suitable to the degree of the offence, aggravated by its being committed against a person within his own house; but still punished *pœna ordinaria:* And as the principles of justice thus coincide with the later practice, it would be highly unreasonable to resort to those more ancient precedents, supported by no positive law, to revive a practice which probably had taken rise from the feuds and animosities which this nation in former times was unhappily engaged in, when every private family was in a state of war, which made it the more necessary to make a man's house his sanctuary. But as these times are now long ago happily at an end, and as in consequence thereof the practice has conformed itself to the rules and principles of justice, it would be highly unexpedient now to revive that antiquated and obsolete practice, of making every injury offered to a person within his house a capital crime.

But however the law may be found to stand in this particular, where the facts libelled are undeniably relevant to infer the crime of hamesucken, it is justly to be doubted whether the *species facti* charged in this indictment is sufficient for that purpose; unless it can be maintained, that every injury, of whatever kind, offered to a person within his own house, whether personal, real, or verbal, is to be capitally punished.

What the pannel intends is, that, as the general rule is, *quod affectus distinguit maleficium,* the essence of the crime of hamesucken consists in an assault made upon the person of the party injured within his own house, where the act of violence and assault concurs with the *animus injuriandi;* and therefore it is, that

should a house be invaded with an intention to burn and destroy the same, or to rob and carry off the effects, however valuable, and no injury is offered, or assault committed upon the person, however atrocious the offence may be in other respects, it would not infer the crime of hamesucken.

And upon the same principle, should a rape, or *streprum violentum* be committed against a woman within her own house, however criminal this may be, and though the rape itself would subject the party to a capital punishment, it is submitted to your Lordships, whether this would be relevant, *separatim* to infer the capital crime of Hamesucken, where the criminal act did not proceed from any purpose or intention to assault or injure the person *sed libidinis causa.* A distinction founded in the nature of things, and as such, acknowledged in a variety of parallel cases; and more particularly in the case of theft, where the *animus lucri faciendi* being the distinguishing characterestic of that crime, it was an allowed principle *fraudulenter res contrectari posse seni furto*: One noted example of which was, *qui servum alienum contrectavit libidinis causa.* The damage thereby sustained was one and the same, from whatever motive the crime was committed; but as the intention of the offender could alone distinguish the nature or degree of the offence, he would in no instance be accused as guilty of an intention to steal, where the act proceeded from a quite different motive; and so the rule is elegantly established l 39. Paud. de furt. Si meretricem alianam ainibam rapuit quis, vel celavit, furtum non est, nec enim factum quæritur sed causa faciendi, causa autem faciendi Libido fuit, non furtum; and again in L. 53. ejusd. tit. qui injuriæ causa Januam effregit quam is unde per ateos res eimo'œ sunt non tenitur furti nam maleficia voluntas et propositum delinquentia distinguerunt.

The application of this principle to the case in hand is obvious from the species fact charged in the indictment itself, where all the violences charged upon the pannel, and more particularly, the forcible entry into the house of Edinbelly, and forcible abduction from thence, are acknowledged to have been committed, not from any premeditated purpose to injure or assault the person of Jean Key but to accomplish the intended marriage; a fact which, if true, neither the pannel nor his counsel mean to justify, or to deny the atrociousness of the offence, but which they humbly contend, was in no degree relevant to infer the separate crime of hamesucken, where *ex concessis*, the supposed violence charged to have been committed within the house, was but the preparatory step to the intended marriage; so that, however this, if true, may justly be considered as an aggravation of the other offences libelled, it cannot consitute the separate crime of hamesucken.

The information next proceeds to treat the third and fourth charges in the indictment; but the discussion is very meagre, the pannel contenting himself with a reference to the pleadings in the case of one Thomas Gray, which had then been recently decided and which embraced the same questions of law. The pannel contends generally, that these offences are not capitally punishable; that

there is neither statute nor usage to authorise such capital punishment; that the crimes charged are not in themselves of so odious a nature as the crime of rape; that the provision of the Roman law which punished the forcible abduction with death, and the actual rape only with inferior pains, was repugnant to justice, and had been exploded in all civilized nations. The pannel farther contended, that if the forcible abduction was not capital, neither was the forcible marriage; that a marriage accomplished by force is void in law, and of course, that, independently of the rape which formed a different question, a crime in such a case had been rather attempted than committed.

The pannel then stated certain objections to the production of the two declarations of Jean Key of the 20th May and 4th June, 1751. He contended, that if Jean Key had been alive, she would not have been a good witness on the trial as to many particulars, regarding which there could be no *penuria testium*; that the declarations founded upon had been emitted in absence of the accused, and without his having an opportunity of putting cross questions, and were of course altogether inadmissible; that it was a further and insuperable objection to them, that they had been emitted out of the presence of the jury, who had no opportunity of observing the appearance and manner of the witness; that to admit these declarations as evidence, would in effect be to substitute a precognition for a trial, and to dispense with the important solemnity of an oath. The information concludes thus:—

The pannel's anxiety in a matter of this importance, will plead his excuse for the length of this information upon a complicated libel consisting of such a variety of points. He relies upon your Lordships' justice, that such an interlocutor upon the relevancy will be pronounced, as your Lordships shall judge is agreeable to the rules of the law of Scotland: And more particularly, that neither the crime of hamesucken, as charged in this indictment, nor the crimes of forcible abduction, or forcible marriage, will be sustained relevant to infer a capital punishment. That his total exculpatory defence upon Jean Key's alleged previous consent will be found relevant, and admitted to proof: That the other total defence founded upon Jean Key's subsequent consent and after declaration, will likewise be sustained relevant to restrict the pains of law to an arbitrary punishment: That the two pretended declarations of Jean Key, of the 20th May and 4th June 1751 referred to in the indictment, will be rejected as an incompetent mean of proof; and that in so far as a relevancy shall be sustained upon all or any of the articles of this indictment, he will be allowed a proof at large of all facts and circumstances that may tend to exculpate or aleviate. If in the event he shall appear to be guilty in form and manner charged in this indictment, he must needs confess the attrociousness of the crimes merits the highest censure of the law: But on the other hand, if he proves his defence, however he may have suffered under a tedious imprisonment, he will reap this advantage, that his innocence will be ascertained in the most public manner; and these impressions, under which he labours at present, effectually removed.—*In respect whereof, &c.*

No. II.

ABSTRACT OF THE PLEADINGS

ON

The Import of the Verdict returned in the Case of James M'Gregor.

The Information for the pannel begins by recapitulating the charge made in the libel, and the defences proponed thereto, together with the interlocutor of relevancy; from which the pannel contended, that it was the object of the Court to remit both the proof and the relevancy of his defences to the Jury. It then proceeds to state, that after a long trial. which lasted without intermission from 8 o'clock in the morning of Monday the 3d July, till one o'clock in the morning of the following Wednesday, the Jury, after deliberating till 9 o'clock of the same morning, returned their verdict. That by their verdict they did not intend to convict the pannel so as to bring upon him a capital punishment, as they acquitted him of the charges in the indictment, relating to the forcible marriage and rape; although they convicted him of the forcible entry of the house of Edinbelly, and forcible abduction of Jean Key. That however, they had found Jean Key's subsequent acquiescence proven. That some of the Jury understanding, that from an inaccuracy in a part of their verdict as to the charge of hamesucken, sentence of death might ensue, had presented a declaration to the Court, expressive of their real opinion. That unless effect were given to the declared intention of the Jury, not only would the grossest injustice be done to the pannel, but the unfortunate jurors themselves would be placed in the most painful situation. That the Jury had not exceeded their powers in tendering the declaration in question, which arose naturally out of the very terms of their verdict; and that accordingly effect must be given to it by the Court to save the pannel from a capital punishment.—The pannel then resumed the argument in his former information to prove, that neither hamesucken nor forcible abduction are capital crimes by the law of Scotland. But, independently of this, the pannel contended, that as in every indictment for hamesucken, it was necessary to charge, that the party assaulted was at the time lying and rising nightly and daily within the house, and that the house had been entered for the express purpose of assaulting the person, and not for a different, although a criminal purpose, such as that of robbing or burning the house; so it was necessary that these ingredients of the crime should be embodied in the verdict. That as this had not

ere is . . . one in the present case, a capital punishment could not ensue, even if it were held that the crime of hamesucken was capital by the law of Scotland. That moreover, as the hamesucken and abduction were committed only as preparatory to the forcible marriage, and as the Jury had found that Jean Key had subsequently acquiesced in the marriage, this acquiescence, which is held sufficient in law to moderate and reduce the punishment for the chief or ultimate offence of forcible marriage, or rape, must have the same effect on the other offences committed as subordinate to the principal crime. That the essence of the crime of hamesucken consisted in the assault upon the person. That it is punished with great rigour, not so much as a breach of the public peace, as a heinous injury committed against a private individual. That in all cases of this kind, a remission by the party injured had the effect to mitigate the punishment, if not to take off the guilt, agreeably to the maxim, *dissimulatione et remissione tollitur injuria*. That as by the laws of the majesty, rape and hamesucken are placed on the same footing as to the mode of trial; and as in rape an immediate disclosure of the violence is required, the same rule must hold with respect to the other crime; a proposition which is supported by M'Kenzie in his treatise on crimes. That although by the practice of later times the mere delay to prosecute was not held equivalent to a pardon, yet it ought to operate at least in mitigation of punishment. That this doctrine is supported by the analogy of the act 1612 relating to the crime of rape.—The pannel therefore contended upon the whole, that the Jury did not exceed their powers by the terms of their verdict; that the opinion which they had given on the relevancy and effect of the alleviating circumstances, was actually a sound opinion, according to the principles of the law of Scotland; and that a capital punishment could not follow upon the verdict returned.

The information for the Crown begins by stating, that " The trial of this pannel was in reality, and has justly been treated by the Court as a case of great importance. It was brought to vindicate, in the due course of justice, one of the most attrocious and scandalous violations of the public peace, accompanied with the most grievous wrong to the private party injured, that the present age hath seen, or that the most barbarous of the tribe of M'Gregor, to which the pannel belongs, noted as they are by the law, have in any age committed. The most frequent enormities practised by the unruly part of that tribe, have been to prey upon the properties of their fellow subjects, which by their situation were exposed to their thefts or depredations; and by the residence of these people amongst the mountains, lochs, and woods, in the highest parts of the shires of Stirling and Perth upon the

cast, they were in the neighbourhood of the low count which they take their spoil, and upon the north had access thr a desert or uninhabited country, to the remotest part of the highlands, to dispose of it. But in the present case, this unhappy pannel has been guilty of a depredation of a much higher and more enormous kind." The prosecutor then proceeds to enumerate all the aggravating circumstances in the case of the pannel; and to observe, that it involved an accumulation of crimes of the highest enormity. Then, alluding to the verdict and subsequent declaration of the Jury, the prosecutor insisted, that the last mentioned proceeding was quite irregular: that the Court had given an opinion to that effect when the declaration was presented, and had declined to receive it: That the Jury, by delivering their verdict, were fully discharged of their office: That the law of Scotland was so jealous of the purity of a jury, that if a single stranger get access to, and converse with them during their deliberations, their verdict will become tainted and null: That the declaration in question, which was intended to explain and modify the verdict, had been composed by a part of the Jury after their functions had ceased, and they had mingled with the rest of the public; and that although this declaration was favourable to the pannel, yet as the same principle which would require its admission, would also lead to the admission of similar declarations of an opposite character, the danger of such a precedent was quite manifest. The prosecutor then argued, that as the pannel was charged with hamesucken,—as the Court in pronouncing on the relevancy had declared their opinion that hamesucken is a capital crime by the law of Scotland,—and as the Jury had found the crime proven, there could be no doubt as to the sentence which ought to follow. To the plea for the pannel, respecting the qualifications which it is required of a jury to find in their verdict for hamesucken, the prosecutor answered, that all these were to be found in the verdict in question: that the house which had been entered was described as Jean Key's dwelling-house; that all the circumstances of forcible abduction were also detailed at length in the verdict; that there was no necessity for a strict adherence in the verdict to the technical language in the indictment; that the entry of the house of Edinbelly, with intent to carry away the lady, was even admitted in the pannel's own defences; that, therefore, the pannel was found to have been guilty of the most enormous hamesucken, accompanied with all the ingredients which the arguments even of his own Counsel required to render that offence capital. As to the finding in the verdict of the jury respecting the subsequent acquiescence of Jean Key, the prosecutor contended, that by this qualification the preceding parts of the verdict, convicting the pannel of hamesucken and forcible abduction could not be altered or restricted: That doctrine was well established by the law of England, where the principles of jury trial were better understood than in Scotland: That in the present case, the jury had taken it upon them to pronounce a finding not pertinent to the issue before them; that the entry *vi et armis*, of Jean Key's house, which had been found proven, being a *crimen publicum*, could not be remitted by the party injured:

ere is, ere were strong and obvious reasons for presuming the consent of the injured party, from her silence in a case of rape, which did not at all apply to the crime of hamesucken: That the act 1612, which introduces a modification in the punishment of the crime of rape, founded on the subsequent acquiescence of the woman, was intended for the benefit of the injured party, and applies to a case very peculiar in its circumstances, which cannot be the ground work of any general analogy: That in this case the hamesucken was completed before the rape was even attempted; and if any one had interposed to rescue Jean Key before the pretended marriage was celebrated, there could have been no reason for the pannel's present plea of subsequent acquiescence, which, therefore, is founded only upon the accumulation of crimes which he committed; that the plea of the pannel therefore, truly amounted to this, that in every case of hamesucken the remission of the private party might serve as a protection against the course of public justice; that the credit of government, as well as the interest of the public, is concerned, that all the subjects may live in safety and quietness within their own habitations, and especially the weaker sex, who are least able to defend themselves, and who, on account of their age or their fortune, may be most exposed to invasions of this nature; which, as it is barbarous to commit, it would be unjust and reproachful to suffer to pass without condign punishment. Finally, the prosecutor maintained, that although the jury might have acquitted the pannel entirely by a general verdict, yet as they had thought proper to find special facts tending to the alleviation of his guilt, it belonged to the Court alone to decide upon the relevancy of such findings; and he submitted, that by the law of Scotland, the qualification in this verdict was not such as could hinder the application of the capital punishment to the pannel, standing convicted as he did of the crime of hamesucken, with all its possible aggravations.

THE END.

J. HAY and Co. Printers, Edinburgh.